In the opinion of Butler Snow LLP, Bond Counsel, assuming continuous compliance with certain covenants and representations by the Issuer and the Company, under existing laws, regulations, rulings and judicial decisions and assuming the accuracy of certain representations and continuous compliance with certain covenants described herein, interest on the Series 2020A Bonds (a) is excludable from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date of delivery of the Series 2020A Bonds (the "Code"), except for interest on any Series 2020A Bond for any period during which such Series 2020A Bond is held by a "substantial user" of the facilities refinanced with the proceeds of the Series 2020A Bonds or a "related person" within the meaning of Section 147(a) of the Code, (b) is not a specific preference item for purposes of the federal alternative minimum tax, and (c) is excludable from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect on the date of delivery of the Series 2020A Bonds. In the opinion of Bond Counsel, interest on the Series 2020B Bonds is not excludable from gross income for federal and Colorado income tax purposes. For a more complete description, see "TAX MATTERS" herein.



## \$311,785,000 **REGIONAL TRANSPORTATION DISTRICT** (COLORADO)

\$304,820,000 TAX-EXEMPT NON-AMT PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020A

## \$6.965.000 **TAXABLE PRIVATE ACTIVITY BONDS** SERIES 2020B

Dated: Date of Delivery

Due: as shown on inside cover

The Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A (the "Series 2020A Bonds") and Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Series 2020 Bonds"), are being issued by the Regional Transportation District (Colorado) (the "District", and in its capacity as the issuer of the Bonds, the "Issuer"), a public body politic and corporate and a political subdivision of the State of Colorado (the "State"), pursuant to the Indenture of Trust, dated as of August 1, 2010 and amended and restated as of December 1, 2020, (as so amended and restated and as the same may be further amended, supplemented or otherwise modified from time to time, the "Indenture") between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The proceeds of the Series 2020 Bonds are being loaned to Denver Transit Partners, LLC, a Delaware limited liability company (the "Company"), for purpose of (i) repaying a loan, along with other funds available to the Company, made by the Issuer to the Company (the "Series 2010 Loan"), which loan was made from the proceeds of the Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2010 (the "Series 2010 Bonds") and (ii) solely with respect to the proceeds of the Series 2020B Bonds, paying or reimbursing the prior payment of the Costs of Issuance of such Series 2020 Bonds. The Company has directed the Issuer and the Trustee to apply such Series 2010 Loan repayment, along with other funds available to the Company, to the redemption of the Series 2010 Bonds. The proceeds of the Series 2010 Bonds were used to pay a portion of the costs of the Project, which is part of the District's mass transit FasTracks Plan in the Denver metropolitan area that consists of approximately 35 miles of commuter rail service, including service connecting downtown Denver with the Denver International Airport.

The Project was developed pursuant to the Concession and Lease Agreement, dated July 9, 2010, as amended on July 22, 2010 and August 12, 2010 (as further amended, supplemented or otherwise modified from time to time, the "Concession Agreement"), between the Company and the District. Under the Concession Agreement, the Company agreed to design, construct, finance, operate and maintain the Project in return for payments by the District to the Company in the form of Construction Payments and Service Payments. Effective as of March 31, 2019, all three commuter rail lines which comprise the Project have been awarded a Revenue Service Commencement Certificate, which signifies that all three lines are in operations and the Company is receiving Service Payments. As of the date of this Official Statement, construction of the Project has been completed and all three commuter rail lines which comprise the Project have each been awarded a Final Completion Certificate. The Service Payments are the primary source of revenue to the Company during the operation of the Project. The District has made monthly Service Payments to the Company and will make monthly Service Payments to the Company pursuant to the Concession Agreement, in each case, subject to satisfaction of various conditions set forth therein. Pursuant to the Concession Agreement, the Service Payment obligation due is based on operating performance and availability of the Project and is not dependent on ridership levels or farebox collections. Service Payments have two components. One portion, for which no appropriation is required, is secured by a subordinate pledge of the District's sales tax revenues and is structured to exceed scheduled principal of and interest on the Bonds. The second portion is structured to cover operations and maintenance costs of the Project and is subject to annual appropriation by the District.

All of the Company's rights under the Concession Agreement and under the other Material Project Contracts described herein, together with the other Security Interests created under the Security Documents for the benefit of the Trustee on behalf of the Owners of the Bonds, form part of the Trust Estate pledged and assigned to the Trustee as security for the Company's obligation under the Loan Agreement, described below, to make payments to the Trustee equal to the amounts coming due on the Series 2020 Bonds. Interest on the Series 2020 Bonds from their date of delivery is payable semi-annually on each January 15 and July 15, commencing on July 15, 2021, at the rates shown on the inside cover page. The Series 2020 Bonds are subject to optional, mandatory and extraordinary mandatory redemption prior to maturity as described herein. The Series 2020 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof, and, when issued, the Series 2020 Bonds will be registered in the name of CEDE & Co., as nominee for The Depository Trust Company of New York ("DTC"). DTC will act as securities depository for the Series 2020 Bonds. Purchases of beneficial interests in the Series 2020 Bonds will be made in book-entry form only, and purchasers will not receive certificates representing their interests in the Series 2020 Bonds except as described herein.

The Series 2020 Bonds are special, limited obligations of the Issuer payable solely from payments received from the Company pursuant to the Loan Agreement, dated as of August 1, 2010, as amended and restated as of December 1, 2020, between the Issuer and the Company (as so amended and restated, and as the same may be further amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Except for revenues provided pursuant to the Loan Agreement as described in the following sentence, the Owners of the Series 2020 Bonds may not look to any revenues or assets of the Issuer for repayment of the Series 2020 Bonds. The only sources of repayment of the Series 2020 Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement and the Security Interests that are part of the Trust Estate. The Series 2020 Bonds will not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State.

The Series 2020 Bonds are offered when, as and if issued and delivered and accepted by the Underwriters and subject to receipt of the approving legal opinion of Butler Snow LLP, as Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel, Melanie Snyder, and its disclosure counsel, Hogan Lovells LLP; for the Company by its counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York, and Kline Alvarado Veio, P.C., Denver, Colorado; and for the Underwriters by their counsel, Nixon Peabody LLP, New York, New York. It is expected that delivery of the Series 2020 Bonds will be made through the facilities of DTC on or about December 18, 2020.

#### **BofA Securities**, Inc.

## **Barclays Capital, Inc.**

## \$304,820,000 REGIONAL TRANSPORTATION DISTRICT (COLORADO) TAX-EXEMPT NON-AMT PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020A

#### Series 2020A Serial Bonds

\$1,000,000	3.00%		CUSIP <sup>+</sup>
6 2 4 5 0 0 0	5.0070	0.65%	759151AT0
6,245,000	5.00	0.69	759151AU7
5,375,000	5.00	0.74	759151AV5
5,225,000	5.00	0.77	759151AW3
7,260,000	5.00	0.82	759151AX1
5,310,000	3.00	0.87	759151AY9
5,020,000	5.00	0.96	759151AZ6
5,975,000	5.00	1.05	759151BA0
7,675,000	5.00	1.15	759151BB8
6,175,000	5.00	1.22	759151BC6
6,335,000	5.00	1.31	759151BD4
9,015,000	5.00	1.39	759151BE2
6,920,000	5.00	1.44	759151BF9
9,105,000	5.00	1.47	759151BG7
7,095,000	5.00	1.54	759151BH5
9,440,000	5.00	1.58	759151BJ1
8,035,000	5.00	1.63*	759151BK8
12,120,000	5.00	1.66*	759151BL6
12,360,000	5.00	1.70*	759151BM4
12,295,000	4.00	1.81*	759151BN2
14,020,000	4.00	2.00	759151BP7
	7,260,000 5,310,000 5,020,000 5,975,000 7,675,000 6,175,000 6,335,000 9,015,000 9,005,000 9,105,000 7,095,000 9,440,000 8,035,000 12,120,000 12,360,000 12,295,000 14,020,000	$\begin{array}{rrrrrrrrrrrrrrrrrrrrrrrrrrrrrrrrrrrr$	$\begin{array}{cccccccccccccccccccccccccccccccccccc$

\$52,505,000	4.0070 Series 2020A Term Bonds due July 15, 2054		COSII Nulliber 759151BQ5
\$33,615,000	4.00% Series 2020A Term Bonds due July 15, 2035	Priced to Yield 1.89*%	CUSIP <sup>+</sup> Number 759151BR3
\$18,465,000	4.00% Series 2020A Term Bonds due July 15, 2036	Priced to Yield 1.93*%	CUSIP <sup>+</sup> Number 759151BS1
\$17,270,000	3.00% Series 2020A Term Bonds due July 15, 2037	Priced to Yield 2.47*%	CUSIP <sup>+</sup> Number 759151BT9
\$8,770,000	4.00% Series 2020A Term Bonds due July 15, 2038	Priced to Yield 2.06*%	CUSIP <sup>+</sup> Number 759151BU6
\$20,000,000	4.00% Series 2020A Term Bonds due July 15, 2039	Priced to Yield 2.40%	CUSIP <sup>+</sup> Number 759151BV4
\$12,395,000	4.00% Series 2020A Term Bonds due July 15, 2040	Priced to Yield 2.44%	CUSIP <sup>+</sup> Number 759151BW2

\* Priced to the stated yield on the first optional redemption date of January 15, 2031 at a redemption price of 100%.

<sup>+</sup> Copyright 2020, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data in this Official Statement is provided by CUSIP Global Services (CGS), operated on behalf of the American Bankers Association by S&P Global Market Intelligence. This information is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer, the Underwriters or the Company and are included solely for the convenience of the registered owners of the applicable Series 2020 Bonds. None of the Issuer, the Company or the Underwriters is responsible for the selection or use of this CUSIP numbers and no representation is made as to their correctness on the applicable Series 2020 Bonds or as included in this Official Statement. The CUSIP numbers for the Series 2020 Bonds of a specific maturity are subject to change after the issuance of the Series 2020 Bonds as a result of various subsequent actions.

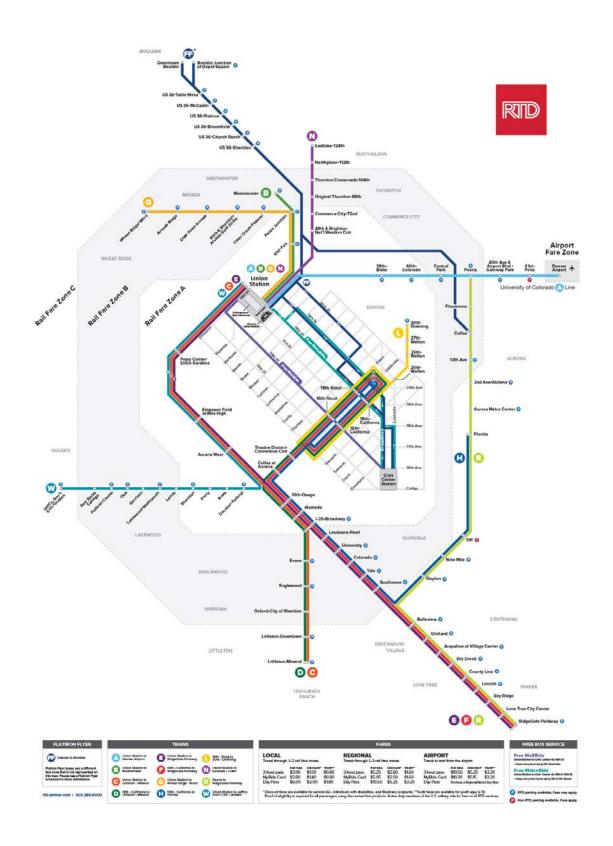
## \$6,965,000 REGIONAL TRANSPORTATION DISTRICT (COLORADO) TAXABLE PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020B

## Series 2020B Bonds

Maturity Date	Principal Amount	Interest Rate	Price	CUSIP <sup>+</sup>
January 15, 2041	\$6,965,000	4.00%	100%	759151BX0

<sup>+</sup> Copyright 2020, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data in this Official Statement is provided by CUSIP Global Services (CGS), operated on behalf of the American Bankers Association by S&P Global Market Intelligence. This information is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer, the Underwriters or the Company and are included solely for the convenience of the registered owners of the applicable Series 2020 Bonds. None of the Issuer, the Company or the Underwriters is responsible for the selection or use of this CUSIP numbers and no representation is made as to their correctness on the applicable Series 2020 Bonds or as included in this Official Statement. The CUSIP numbers for the Series 2020 Bonds of a specific maturity are subject to change after the issuance of the Series 2020 Bonds as a result of various subsequent actions.

## DISTRICT NETWORK OVERVIEW



#### **PROJECT MAP**



No dealer, broker, salesman or other person has been authorized by the Company, the Issuer, the Underwriters or any other person described herein to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the Company, the Issuer or the Underwriters or any such other person. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be (i) any sale of the Series 2020 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale or (ii) any offer, solicitation or sale to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein concerning The Depository Trust Company, the Issuer or the Underwriters as to the completeness or accuracy of such information. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sales made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Company, Equity Participants or DTC (or any other information) since the date hereof.

The following sentence is provided by the Underwriters for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under federal securities laws as applied to the facts and circumstances of the transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

THE ISSUER HAS NOT PREPARED OR ASSISTED IN THE PREPARATION OF THIS OFFICIAL STATEMENT EXCEPT THE STATEMENTS MADE UNDER "PROJECT PARTICIPANTS—The Regional Transportation District," LITIGATION—The Issuer" and APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT" HEREIN, AND, EXCEPT AS AFORESAID, THE ISSUER IS NOT RESPONSIBLE FOR ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT. EXCEPT FOR THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED TO AFFECT THE ISSUANCE OF THE SERIES 2020 BONDS, THE ISSUER HAS NOT OTHERWISE ASSISTED IN THE PUBLIC OFFER, SALE OR DISTRIBUTION OF THE SERIES 2020 BONDS. ACCORDINGLY, EXCEPT AS AFORESAID, THE ISSUER DISCLAIMS RESPONSIBILITY FOR THE DISCLOSURES SET FORTH IN THIS OFFICIAL STATEMENT OR OTHERWISE MADE IN CONNECTION WITH THE OFFER, SALE AND DISTRIBUTION OF THE SERIES 2020 BONDS.

The Series 2020 Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Neither the Securities and Exchange Commission nor any other state securities commission has approved or disapproved of the Series 2020 Bonds or passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary is a criminal offense.

In making an investment decision, investors must rely on their own examination of the Company and the Project and the terms of the offering, including the merits and risks involved. None of the Company, the Issuer or the Underwriters or any of their representatives or affiliates is making any representation regarding the legality of an investment by you under applicable investment or similar laws. You should not construe anything in this Official Statement as legal, business or tax advice, and you should consult with your own advisors as to legal, tax, business, financial and related aspects of the Series 2020 Bonds.

The statements contained in this Official Statement that are not purely historical are forward-looking statements. Forward looking-statements can be identified by the use of forward-looking words, such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates" and "anticipates" or the negative terms or other comparable words, or by discussions of strategy, plans or intentions. Examples of forward-looking statements are statements that concern the Company's or the Project's future revenues, costs and liquidity. The forward-looking statements contained herein are based on the Company's expectations and are necessarily dependent upon assumptions, estimates and data that they believe are reasonable as of the date made but that may be incorrect, incomplete or imprecise or reflective of actual results. The Company does not undertake to provide any new forward-looking statements, even if it becomes clear that the forward-looking statements contained herein will not be realized.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2020 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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### SUMMARY

This Summary is not a complete description of the Series 2020 Bonds and the Project and does not contain all of the information you should consider before making any investment decision with respect to the Series 2020 Bonds. You should read the more detailed information appearing or incorporated by reference in this Official Statement and the documents summarized or described herein in their entirety for a more complete understanding about the Project, the offering and the terms, and security and sources of payment for the Series 2020 Bonds. Terms used in this Summary and not defined in the Summary are defined in APPENDIX B—"DEFINITIONS OF TERMS."

## THE SERIES 2020 BONDS

Bonds Offered	Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A (the "Series 2020A Bonds") in the aggregate principal amount of \$304,820,000 and Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Series 2020 Bonds") in the aggregate principal amount of \$6,965,000. The Series 2020 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. See "THE SERIES 2020 BONDS."
Interest	The Series 2020 Bonds will bear interest at the rates shown on the inside cover page of this Official Statement. Interest on the Series 2020 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.
Interest Payment Dates	Interest will be payable semi-annually on January 15 and July 15 of each year, commencing on July 15, 2021, until maturity or prior redemption.
Maturity Dates	The Series 2020 Bonds will mature on the semi-annual maturity dates set forth on the inside cover of this Official Statement.
Optional Redemption	Series 2020A Bonds (other than the Series 2020A Bonds maturing July 15, 2033, July 15, 2039 and July 15, 2040, which Series 2020A Bonds are not subject to optional redemption prior to their respective maturity dates) will be subject to optional redemption on January 15, 2031 and on any Business Day thereafter, by the Issuer, at the direction of the Company, in whole or in part, and if in part, by lot within such maturities as selected by the Company, with funds provided by the Company at a redemption price of par plus accrued and unpaid interest on the Series 2020A Bonds being redeemed to, but, not including the redemption date (provided that any redemption in part of the Series 2020A Bonds may only be made in Authorized Denominations). The Issuer, at the direction of the Company, may optionally redeem the Series 2020B Bonds in whole or in part, and if in part, in accordance with the selection basis for the Series 2020B Bonds set forth in "THE SERIES 2020 BONDS—Redemption—Optional Redemption," on any date with funds provided by the Company at a redemption, on any date with funds provided by the Company at a redemption, or any date with funds provided by the Company at a redemption, any of the Series 2020B Bonds of such maturity to be redeemed; and (ii) the sum of the present values of the applicable remaining scheduled payments of principal and interest to maturity on the Series 2020B Bonds of such maturity to be redeemed, not including any portion of

	those payments of interest accrued and unpaid as of the date on which such Series 2020B Bonds are to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 40 basis points, plus in each case, accrued and unpaid interest on the Series 2020B Bonds being redeemed to, but not including, the redemption date. The Series 2020B Bonds may be optionally redeemed only if the redemption price calculated pursuant to the previous sentence is less than or equal to the sum of one hundred-seven percent (107)% of the principal amount of the Bonds to be redeemed plus accrued interest to the redemption date. See "THE SERIES 2020 BONDS— Redemption—Optional Redemption."
Mandatory Redemption	The Series 2020 Bonds that are Series 2020A Term Bonds will be subject to mandatory sinking fund redemption prior to maturity on the dates set forth herein at a redemption price of par plus accrued interest to, but not including, the date fixed for redemption. See "THE SERIES 2020 BONDS—Redemption—Mandatory Sinking Fund Redemption."
Extraordinary Redemption	The Series 2020 Bonds are subject to extraordinary mandatory redemption as described under "THE SERIES 2020 BONDS— Redemption—Extraordinary Mandatory Redemption."
Risk Factors	A number of risks could affect the payments to be made on the Series 2020 Bonds and the market value of the Series 2020 Bonds. See "RISK FACTORS" for a discussion of some of these risks.
THE	DISTRICT AND THE PROJECT
The District	The District was created in 1969 by the State General Assembly as a mass transportation planning agency for the Denver metropolitan area. The District is a public body politic and corporate and a political subdivision of the State of Colorado and is responsible for developing, maintaining and operating a mass transportation system within its boundaries. The District's service area encompasses portions of an eight-county region, including the Denver metropolitan area. For additional information about the District, see APPENDIX A— "REGIONAL TRANSPORTATION DISTRICT."
	As described herein, the District has two separate and distinct responsibilities in connection with the financing and implementation of the Project: (a) as a party to the Concession Agreement and (b) as the "conduit issuer" of the Series 2020 Bonds. When acting in its capacity as the issuer of the Series 2020 Bonds, which are special, limited obligations of the District issued for the benefit of the Company, the District is referred to in this Official Statement as the "Issuer."
The Project	The Project is part of the District's mass transit expansion plan for the Denver metropolitan area known as FasTracks, which includes approximately 122 miles of commuter and light rail transit service, as well as other transit improvements. The Project consists of approximately 35 miles of commuter rail transit lines, including a line connecting Denver International Airport to Denver Union Station and a commuter rail maintenance facility ("CRMF") and systems and track improvements to Denver Union Station. Effective as of March 31, 2019, all three commuter rail lines which comprise the Project have

been awarded a Revenue Service Commencement Certificate, which signifies that all three lines are in operation and the Company is receiving Service Payments. As of the date of this Official Statement, construction of the Project has been completed and all three commuter rail lines which comprise the Project have each been awarded a Final Completion Certificate. The Project was designed and constructed and is being operated and maintained pursuant to the terms of the Concession Agreement; the Project also included the procurement and maintenance of rolling stock for the commuter rail service. The District considers the Project to be an essential part of its efforts to reduce congestion and to support economic development in the Denver metropolitan area. For additional information regarding the operation and maintenance of the Project, see "THE PROJECT."

The Company...... Denver Transit Partners, LLC (the "Company"), a Delaware limited liability company, has entered into the Concession Agreement with the District for the purpose of the design, procurement, construction, and financing of the Project and operation and maintenance of the Project through December 2044. The membership interests of Denver Transit Holdings, LLC ("DTH"), a Delaware limited liability company that owns all of the membership interests in the Company, are currently indirectly held by (a) Fluor Enterprises, Inc. ("Fluor"), (b) John Laing Investments Limited ("John Laing") and (c) Aberdeen Global Infrastructure Partners, LP ("Aberdeen"), on or about the Closing Date for the Series 2020 Bonds. See "PROJECT PARTICIPANTS—Equity Participants."

Construction..... Substantially all of the construction work relating to the Project was completed by Denver Transit Systems, LLC (the "Design Build Contractor"), a special-purpose entity formed by Fluor and Balfour Beatty Infrastructure Inc (f/k/a Balfour Beatty Rail Inc.) ("BBRI") pursuant to the Design Build Contract described herein. To guarantee performance of its obligations, the Design Build Contractor provided the Company with a performance security package that includes: joint and several payment and performance guaranties from Fluor Corporation and Balfour Beatty, LLC (and a financial guaranty from Balfour Beatty plc) and a warranty bond in the amount of \$160,189,841, which warranty bond terminates on the later of September 30, 2020, or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020. As of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021. See "THE PROJECT-Implementation of the Project" and "PRINCIPAL PROJECT AGREEMENTS-The Design Build Contract."

Operations .....

The Project is being operated and maintained by Denver Transit Operators, LLC (the "O&M Contractor"), a special-purpose entity formed by Fluor, BBRI and Alternate Concepts, Inc. ("ACI"), pursuant to an Operations and Maintenance Contract (as amended, supplemented or otherwise modified from time to time, the "O&M Contract") that has the same duration as the Concession Agreement. The O&M Contract requires the O&M Contractor to undertake all operations and maintenance obligations of the Company, including all renewal works under the Concession Agreement for a fixed price; provided that the fixed price may be adjusted concurrently with any adjustments to the service payments payable under the Concession Agreement (to the extent such adjustments relate to services provided by the O&M Contractor and are reflected in a modification agreed by the Company and the O&M Contractor).

As described under "PAYMENTS UNDER THE CONCESSION AGREEMENT-Service Payments," pursuant to the Concession Agreement, Service Payments to the Company are expected at all times to be sufficient to enable the Company to pay the administrative fees and expenses, O&M Expenditures, amounts payable by the Company under the Loan Agreement (equal to debt service payable on the Series 2020 Bonds) and a return on equity. Under the Concession Agreement, Service Payments may be subject to reduction if the Company fails to satisfy specified performance standards. The O&M Contract is structured to pass through to the O&M Contractor any performancebased reductions in Service Payments as a reduction in the amounts payable by the Company to the O&M Contractor. Any such reduction would reduce the amount of the Company's O&M Expenditures then due. Such pass-through provisions are sometimes referred to herein as "back-to-back" provisions. To guarantee performance of the O&M Contractor's obligations, the O&M Contractor provided the Company a performance security package that includes: joint and several payment and performance guaranties from Fluor Corporation and Balfour Beatty, LLC (and a financial guaranty from Balfour Beatty plc); an ondemand letter of credit covering certain payment and performance obligations: and a separate letter of credit covering the cost of renewal works in the event actual costs exceed budgeted amounts and reserves. See "PAYMENTS UNDER THE CONCESSION AGREEMENT-Service Payments" and APPENDIX F-"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

#### **CONCESSION AGREEMENT**

> The Concession Agreement provides that Service Payments are subject to reduction if the operations of the System result in the Company's failure to satisfy specified performance standards. (These standards are

defined in the Concession Agreement as an Availability Factor which may be applied to reduce the amount of the Service Payment in certain circumstances, as well as Performance Deductions.) The Availability Factor, as calculated under the Concession Agreement, should not be less than 80%, and the Performance Deduction Percentage, as calculated under the Concession Agreement, should not be greater than 5%, with the result that the application of both the Availability Factor and Performance Deductions should not result in Service Payments being reduced by more than approximately 25%. The Concession Agreement also provides that deductions due to the assessment of Performance Deductions and the Availability Factor are first applied to the portion of the Service Payments that constitutes an RTD Appropriation Obligation before being applied to the TABOR Portion of the Service Payments. Since the TABOR Portion, as currently in effect, is calculated to be less than 75% of the Service Payment, the payment of the TABOR Portion, as currently in effect, should not be reduced by the application of the Availability Factor and Performance Deductions. However, an Availability Ratio of less than 80% (and 85% in six or more months of any eight-month period) in certain circumstances can result in a Concessionaire Termination Event. See "PRINCIPAL PROJECT AGREEMENTS-Concession Agreement" and APPENDIX C------SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

Since January 2017 and through October 2020, the Availability Factor has been at or above 99% in every period. Furthermore, there has only been one instance of Performance Deductions being imposed to date, and this occurred in April of 2016.

The Company expects that the TABOR Portion paid to the Company in any year will be greater than the amount of debt service payable on the Series 2020 Bonds in that year. Payment by the District of the TABOR Portion is secured by the District's subordinate pledge of the RTD Sales Tax Revenues and is not subject to annual appropriation by the District. The RTD Appropriation Obligation is payable from available funds of the District and is subject to annual appropriation by the The Concession Agreement provides that any TABOR District. Portion that is not paid due to insufficiency of RTD Sales Tax Revenues also constitutes an RTD Appropriation Obligation, payable from available funds of the District and subject to annual appropriation by the District. Except with respect to RTD Appropriation Obligations, failure to pay amounts when due (after 10 days) results in an RTD Termination Event under the Concession Agreement. See "PAYMENTS UNDER THE CONCESSION AGREEMENT-TABOR Portion" and "-RTD Appropriation Obligations."

Relief Events...... Pursuant to the Concession Agreement, the Company is entitled to schedule relief (including, among other relief, the avoidance of Performance Deductions or impact to certain Availability Ratios) and compensation for certain costs actually incurred as a result of a Relief Event (including any increase in costs as a result of such Relief Event) occurring during the Operating Period, to the extent that the Company has not contributed to the occurrence of such Relief Event, such Relief Event would have occurred notwithstanding the Company's compliance with its obligations under the Concession Agreement and the Company has complied with its obligations to use reasonable efforts to mitigate such Relief Event. Under the Concession Agreement, Relief Events include, among others, the discovery of previously unidentified environmental conditions and utilities, the imposition of certain taxes on the Project, certain dispute resolution determinations found against the District and certain changes in law. See "PAYMENTS UNDER THE CONCESSION AGREEMENT— Relief Events."

Termination.....

Upon the occurrence of any of the termination events set forth in the Concession Agreement and described herein, the Concession Agreement may be terminated by either the District or the Company, as applicable, in either event creating an obligation of the District to pay the Applicable Termination Amount to the Company. There is no termination for convenience. The District is obligated to use best efforts to pay any Applicable Termination Amount to the Company as a lump sum, which the Company would be required to use to redeem Bonds. The Concession Agreement provides that, to the extent that the District fails to make such a lump sum payment, its obligation to pay the TABOR Portion survives any termination of the Concession See "PAYMENTS UNDER THE CONCESSION Agreement. AGREEMENT-Termination Payments," "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement—Termination of the Concession Agreement" and APPENDIX C-"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT-Termination of the Concession Agreement."

Documents. The Security Interests include: (a) all of the Company's interest in the Concession Agreement, the Project Accounts, the Project Revenues and any Termination Payments received under the Concession Agreement, (b) a pledge by DTH of its membership

#### **SECURITY FOR THE SERIES 2020 BONDS**

Loan Agreement ..... The net proceeds of the Series 2020 Bonds will be loaned to the Company pursuant to the Loan Agreement between the Company and the Issuer, for the purpose of (i) repaying a loan, along with other funds available to the Company, made by the Issuer to the Company (the "Series 2010 Loan"), which loan was made by the Issuer from the proceeds of the Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2010 (the "Series 2010 Bonds") and (ii) solely with respect to the proceeds of the Series 2020B Bonds, paying or reimbursing the prior payment of the Costs of Issuance of such Series 2020 Bonds. The Company has directed the Issuer and the Trustee to apply such Series 2010 Loan repayment, along with other funds available to the Company, to the redemption of the Series 2010 Bonds. Pursuant to the Loan Agreement, the Company agrees to make payments to the Trustee in the amounts and on the dates required to pay the principal of and interest on the Series 2020 Bonds and agrees to comply with various covenants for the benefit of the Trustee and the Owners of the Series 2020 Bonds. See "SECURITY FOR THE BONDS-Loan Agreement." The payment of the Series 2020 Bonds and any Additional Parity Security Interests ..... Bonds that may be issued in the future (collectively, the "Bonds") are secured by all of the Security Interests created for the benefit of the Trustee on behalf of the Owners of the Bonds pursuant to the Security

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interests in the Company and (c) a mortgage on the Company's leasehold interest in the Project property.

The Indenture establishes the debt service reserve requirement as an Debt Service Reserve Account..... amount equal to six months of principal of and interest next coming due on the Bonds (the "Debt Service Reserve Requirement"). The Debt Service Reserve Account was established under the Indenture of Trust, dated as of August 1, 2010, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (as amended, supplemented or otherwise modified from time to time prior to the Closing Date, "Original Indenture") and is required to be maintained in an amount equal to the Debt Service Reserve Requirement, pursuant to the terms of the Indenture. The source of funds for the Debt Service Reserve Requirement as of the Closing Date will be a portion of the funds currently on deposit in the Debt Service Reserve Account. After the Closing Date, funds in the Revenue Account, to the extent available, are to be deposited to satisfy any deficiency in the Debt Service Reserve Requirement. If funds are not available, failure to cure any such deficiency is not an Event of Default under the Loan Agreement or the Indenture. At any time, amounts on deposit in the Debt Service Reserve Account may be replaced by an Acceptable Letter of Credit or an Acceptable Surety Policy in accordance with the Indenture. See "SECURITY FOR THE BONDS-Indenture" and "ACCOUNTS AND FLOW OF FUNDS."

Other Accounts and Flow of Funds.... Certain funds and accounts, including the Project Accounts, were and will be established under the Indenture and the Lockbox Account Agreement dated as of August 1, 2010, and amended and restated as of December 1, 2020, between the Company, the Trustee, the Securities Intermediary and the Account Bank (as so amended and restated, the "Lockbox Account Agreement"). Along with other funds available to the Company, the proceeds received from the sale of the Series 2020A Bonds will be deposited directly into the Redemption Account (or an appropriate sub-account thereof) and applied to the redemption of the Series 2010 Bonds, and the proceeds received from the sales of the Series 2020B Bonds may be used for redemption of the Series 2010 Bonds and will be used for certain other payments associated with the Series 2010 Refinancing. During the Operating Period, Service Payments and other amounts received by the Company pursuant to the Concession Agreement will be deposited into the Revenue Account in accordance with the Lockbox Account Agreement. The Company has granted a Security Interest in all of the Project Accounts pursuant to the terms of the Security Agreement.

> As described under "ACCOUNTS AND FLOW OF FUNDS," funds on deposit in the Revenue Account are to be applied to pay administrative costs and expenses, any rebate payments and operations and maintenance costs of the Project prior to payment of principal of and interest on the Bonds. The Lockbox Account Agreement provides, however, that commencing on January 1 of any year for which adequate funds to satisfy any RTD Appropriation Obligation have not been included in the annual budget adopted by the District for that year, and, for so long as such funds are not so included, funds on deposit in the Revenue Account will be applied to pay principal of and interest on the Bonds prior to the payment of operations and maintenance costs of the Project.

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For a description of all the funds and accounts established in relation to the Project and a more detailed description of the flow of funds, see "SECURITY FOR THE BONDS—Indenture" and "ACCOUNTS AND FLOW OF FUNDS."

Additional Parity Bonds...... Under the Indenture, upon request from the Company, the Issuer may issue Additional Parity Bonds subject to satisfying various minimum coverage ratios and other requirements set forth in the Indenture. See "SECURITY FOR THE BONDS—Indenture—Additional Parity Bonds."

**Special, Limited Obligations**...... Except for revenues provided pursuant to the Loan Agreement as described in the following sentence, the Owners of the Series 2020 Bonds may not look to any revenues or assets of the Issuer for repayment of the Series 2020 Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement and the Security Interests that are part of the Trust Estate. The Series 2020 Bonds do not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State.

#### **OFFICIAL STATEMENT**

#### Relating to REGIONAL TRANSPORTATION DISTRICT (COLORADO)

## TAX-EXEMPT NON-AMT PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020A \$304,820,000

### TAXABLE PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020B \$6,965,000

#### **INTRODUCTION**

### General

The purpose of this Official Statement, which includes the cover page, inside cover page and appendices, is to provide information in connection with the issuance by the Regional Transportation District (Colorado) (the "District", and in its capacity as the issuer of the Bonds, the "Issuer"), a public body corporate and politic and a political subdivision of the State of Colorado (the "State"), of \$304,820,000 aggregate principal amount of Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A (the "Series 2020A Bonds") and of \$6,965,000 aggregate principal amount of Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Series 2020 Bonds"). The Series 2020 Bonds are being issued pursuant to the Indenture of Trust, dated as of August 1, 2010, as amended and restated as of December 1, 2020 (as so amended and restated and as the same may be further amended, supplemented or otherwise modified from time to time, the "Indenture"), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and pursuant to Sections 32-9-101 through 32-9-164, inclusive, of the Colorado Revised Statutes (the "Act"). Capitalized terms used but not defined in the front portion of this Official Statement have the meanings set forth in APPENDIX B or in the Concession and Lease Agreement, dated July 9, 2010, as amended on July 22, 2010 and August 12, 2010 (as further amended, supplemented or otherwise modified from time to time, the "Concession Agreement"), between the Company and the District, a summary of which is included in this Official Statement as APPENDIX C.

The Series 2020 Bonds are being issued by the Issuer to fund a loan to Denver Transit Partners, LLC, a Delaware limited liability company (the "Company") for the purpose of (i) repaying a loan, along with other funds available to the Company, made by the Issuer to the Company (the "Series 2010 Loan"), which loan was made by the Issuer from the proceeds of the Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2010 (the "Series 2010 Bonds") and (ii) solely with respect to the proceeds of the Series 2020B Bonds, paying or reimbursing the prior payment of the Costs of Issuance of such Series 2020 Bonds. The Company has directed the Issuer and the Trustee to apply such Series 2010 Loan repayment, along with other funds available to the Company, to the redemption of the Series 2010 Bonds.

## The Project

The Project, sometimes called the "Eagle P3 Project," is part of the District's FasTracks Plan to expand and operate mass transit throughout the greater Denver metropolitan area. The FasTracks Plan includes, among other components, approximately 122 miles of commuter and light rail transit in six transit corridors. See the map on page iv and "THE PROJECT—Overview of FasTracks" and APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT."

The District implemented the Project as a design-build-finance-operate-maintain project through a longterm concession with a private sector partner. After a competitive procurement process, the District awarded the concession for the Project to the Company on June 15, 2010. The Concession Agreement for the Project was executed by the District and the Company on July 9, 2010. On July 22, 2010, the Concession Agreement was amended to provide for a stated termination date of December 31, 2044, instead of the initial stated termination date of December 31, 2056. On August 12, 2010, the Concession Agreement was amended to (i) increase the Principal Limit (as defined in the Concession Agreement) of Senior RTD Debt and Subordinate Lien Bonds and (ii) amend certain schedules attached to the Concession Agreement, including with respect to Construction Payments, Service Payments and TABOR Secured Payments (as defined in the Concession Agreement).

The Project consists of (a) the design and construction of three Commuter Rail Projects: (i) the East Corridor from downtown Denver Union Station ("DUS") to Denver International Airport, also referred to as the University of Colorado A Line (approximately 22.8 miles); (ii) the Gold Line from downtown Denver to Wheat Ridge, also referred to as the G Line (approximately 7.3 miles); and (iii) the initial portion of the Northwest Rail Corridor, running from DUS to Westminster, also referred to as the Northwest Rail Electrified Segment ("NWES") or the B Line (approximately 5.2 miles); (b) design and construction of the Commuter Rail Maintenance Facility (the "CRMF"); (c) the right-of-way alignment known as "DUS to CRMF," which is required for the movement of rolling stock from CRMF to DUS; (d) the procurement and installation of communications systems, a signaling system and a traction electrification system (and all the equipment therein) for the DUS Rail Segment (the "DUS Rail Segment"); (e) the procurement of rolling stock for the Commuter Rail Projects; (f) the operation and maintenance of the Commuter Rail Projects, the CRMF and the rolling stock; and (g) the relocation of certain freight rail infrastructure. Construction of the Project has been completed. For further information, including the dates of substantial completion and other information regarding the status of completion for each element of the Project, see "THE PROJECT."

#### The Concession Agreement

Pursuant to the Concession Agreement, the District leased to the Company all of the Commuter Rail Network (except the DUS Rail Segment) and the rolling stock, and the Company agreed to design, construct, finance, operate and maintain the Project.

Under the Concession Agreement, the District is obligated to pay to the Company Service Payments throughout the term of the Concession Agreement. See "PROJECTED DEBT SERVICE COVERAGE" and FINANCING FOR THE PROJECT." The Service Payments have two components: (a) the TABOR Portion structured to exceed scheduled principal and interest on the Series 2020 Bonds and (b) the RTD Appropriation Obligation structured to cover operation and maintenance costs of the Project. The term TABOR Portion derives from an amendment to Article X of the State Constitution passed in 1992 known as the Taxpayer's Bill of Rights ("TABOR"). TABOR requires voter approval for tax increases, debt, multiple-fiscal year financial obligations and increases in government spending that exceed inflation plus local growth, which, for a governmental entity, such as the District, is based on certain changes in the value of taxable property. The authority for the District to pay the TABOR Portion in accordance with the Concession Agreement was authorized by a November 2, 2004 ballot referendum pursuant to which voters in the District approved an increase in the District's sales tax rate from 0.6% to 1.0%, providing an additional 0.4% sales tax to fund the District's FasTracks Plan.

The Concession Agreement provides that the District's obligation to pay the TABOR Portion is secured by a subordinate pledge by the District of its Sales Tax Revenues, available after payment of the Senior RTD Debt described herein. The District's obligation to pay the TABOR Portion is not subject to annual appropriation. The District's obligation to pay the RTD Appropriation Obligation is payable from available funds of the District and is subject to annual appropriation. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" and "—RTD Appropriation Obligations."

The stated expiration date of the Concession Agreement is December 31, 2044. The Concession Agreement may be terminated prior to its stated expiration date for various reasons, including RTD Termination Events, Concessionaire Termination Events and Extensive Force Majeure Events. The Concession Agreement provides that the Company will receive the Applicable Termination Amount upon the occurrence of any of these

termination events, calculated in accordance with the provisions of the Concession Agreement. The Concession Agreement provides that the District will remain obligated to pay to the Company the portion of any Applicable Termination Amount payable from the TABOR Portion even after the occurrence of a termination event. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—Compensation Upon Termination" and APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

The O&M Contract is designed to require the O&M Contractor to have the same obligations, the same termination events and the same compensation events as the Company has under the Concession Agreement. This structure is intended to ensure that the Company has sufficient moneys to fund its obligations to the District under the Concession Agreement. See "PRINCIPAL PROJECT AGREEMENTS."

#### The Company

The Company, which was formed for the sole purpose of designing, constructing, financing, operating and maintaining the Project, is a limited liability company in which all membership interests are held by DTH, also a Delaware limited liability company. The indirect owners of the membership interests in DTH (the "Equity Participants") are Fluor Enterprises, Inc. ("Fluor"), John Laing Investments Limited ("John Laing") and Aberdeen Global Infrastructure Partners, LP ("Aberdeen"), on or about the date the Series 2020 Bonds are issued. See "PLAN OF FINANCING FOR THE PROJECT" and "PROJECT PARTICIPANTS—Equity Participants."

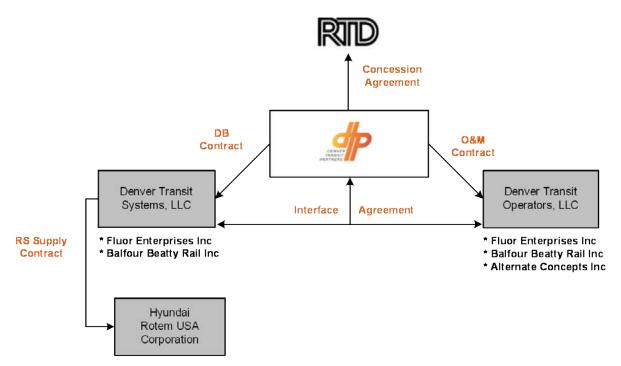
#### **Construction and Operation of the Project**

As described herein, pursuant to the Design Build Contract, substantially all of the Company's obligations to design, construct and complete the Project were undertaken by Denver Transit Systems, LLC (the "Design Build Contractor"), a special-purpose entity formed by Fluor and Balfour Beatty Infrastructure Inc (f/k/a Balfour Beatty Rail Inc.) ("BBRI"). The Design Build Contractor contracted with Hyundai Rotem USA Corp. (the "Rolling Stock Supplier") to manufacture rolling stock for the Project. The remaining performance obligations of the Design Build Contract include its warranty obligations, which terminate on the later to occur of September 30, 2020, or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020. As of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021. See "THE PROJECT—Implementation of the Project—Completion" As of the date of this Official Statement, the remaining performance obligations of the Rolling Stock Supplier are limited to its warranties of the Rolling Stock, which are set to terminate for the Car Structure and Truck Frame, on January 5, 2033, and for a general warranty on one Rolling Stock Car, on January 5, 2021. See "PROJECT PARTICIPANTS" and "PRINCIPAL PROJECT AGREEMENTS."

Pursuant to the O&M Contract, substantially all of the Company's obligations to operate the Project in accordance with the requirements of the Concession Agreement are being undertaken by Denver Transit Operators, LLC (the "O&M Contractor"), a single-purpose, Delaware limited liability company formed by Alternate Concepts, Inc. ("ACI"), BBRI and Fluor. During the Operating Period, the District's obligation to make Service Payments depends upon the Company's performance of its obligations under the Concession Agreement. Pursuant to the Concession Agreement, the Service Payment obligation due is based on operating performance and availability of the Project and is not dependent on ridership levels or farebox collections.

The obligations of the Design Build Contractor were guaranteed, jointly and severally, by Fluor Corporation and Balfour Beatty, LLC (together, the "Design Build Guarantors"), and Balfour Beatty plc provided a guaranty of the payment obligations of Balfour Beatty, LLC. The obligations of the O&M Contractor are also guaranteed, jointly and severally, by Fluor Corporation and Balfour Beatty, LLC (together, the "O&M Guarantors"), and Balfour Beatty plc provides a guaranty of the payment obligations of Balfour Beatty, LLC. See "PROJECT PARTICIPANTS" and "PRINCIPAL PROJECT AGREEMENTS."

In addition, an Interface Agreement has been executed among the Company, the Design Build Contractor and the O&M Contractor that sets forth terms by which the Design Build Contractor and the O&M Contractor are required to cooperate and to coordinate with each other in the performance of their respective obligations under the



Design Build Contract and the O&M Contract. See "PRINCIPAL PROJECT AGREEMENTS-Interface Agreement."

#### **Financing of the Project**

The total cost of the Project (excluding interest expense) is \$1.9 billion, funded from Construction Payments under the Concession Agreement, proceeds of the Series 2010 Bonds, equity contributions and investment earnings. The Company intends that the ongoing operation and maintenance of the Project will be substantially funded with proceeds of the Service Payments made by the District pursuant to the Concession Agreement.

The Company expects to apply proceeds received from the sale of the Series 2020 Bonds for the purpose of completing the Series 2010 Refinancing. See "ESTIMATED SOURCES AND USES OF FUNDS."

#### Security and Sources of Payment for the Bonds

As described in the section "SECURITY FOR THE BONDS-Loan Agreement," the proceeds to be received by the Issuer from the sale of the Series 2020 Bonds are to be loaned to the Company pursuant to the Loan Agreement, dated as of August 1, 2010, as amended and restated as of December 1, 2020, between the Issuer and the Company (as so amended and restated and as the same may be further amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Company agrees, among other things, to make payments to the Trustee in the amounts and on the dates required to pay the principal of and interest on the Series 2020 Bonds. Substantially all of the Issuer's rights under the Loan Agreement, including the Issuer's rights to receive such loan payments, are being pledged and assigned by the Issuer to the Trustee as security for the payment of the Series 2020 Bonds, through the grant of the Trust Estate pursuant to the Indenture. All of the Company's rights under the Concession Agreement, the Design Build Contract, the O&M Contract, the guarantees made by the Design Build Guarantors and the O&M Guarantors, and the other Material Project Contracts described herein are being pledged and granted by the Company to the Trustee pursuant to the Security Agreement as security for the Company's obligations under the Loan Agreement, including the obligation to make payments to the Trustee in the amounts and on the dates required to pay the principal of and interest on the Series 2020 Bonds. The Company's leasehold estate in the real and personal property leased to it pursuant to the Concession Agreement is mortgaged to the Trustee pursuant to the Leasehold Mortgages and DTH is assigning, pledging and granting to the

Trustee, for the ratable benefit of the Owners of the Bonds, a security interest in all of its membership interests in the Company pursuant to the Pledge Agreement.

The Series 2020 Bonds are special, limited obligations of the Issuer payable solely from payments received from the Company pursuant to the Loan Agreement. Except for revenues provided to the Trustee pursuant to the Loan Agreement as described in the following sentence, the Owners of the Series 2020 Bonds may not look to any revenues or assets of the Issuer for repayment of the Series 2020 Bonds. The only sources of repayment of the Series 2020 Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement and the Security Interests that are part of the Trust Estate. The Series 2020 Bonds will not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State.

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#### THE PROJECT

#### Overview

The term "Project" as used in this Official Statement refers to those portions of the District's FasTracks transportation plan, the construction and operation of which are the responsibility of the Company pursuant to the Concession Agreement. The Project consists of (a) the design and construction of three Commuter Rail Projects: (i) the East Corridor from downtown Denver Union Station ("DUS") east to Denver International Airport ("DIA"), also referred to as the University of Colorado A Line (approximately 22.8 miles); (ii) the design and construction of the Gold Line from DUS to Arvada and Wheat Ridge, also referred to as the G Line (approximately 7.3 miles); and (iii) the design and construction of the initial portion of the Northwest Rail Corridor, running from DUS to Westminster, also referred to as the Northwest Rail Electrified Segment ("NWES") or the B Line (approximately 5.2 miles); (b) design and construction of the Commuter Rail Maintenance Facility (the "CRMF"); (c) the right-of-way alignment known as "DUS to CRMF," which is required for the non-revenue movement of rolling stock between these locations; (d) the procurement and installation of communications systems, a signaling system and a traction electrification system (and all the equipment therein) for the DUS Rail Segment (the "DUS Rail Segment"); (e) the procurement of rolling stock for the Commuter Rail Projects; (f) the operation and maintenance of the Commuter Rail Projects, the CRMF and the rolling stock; and (g) the relocation of certain freight rail infrastructure. Construction of the Project has been completed. See "THE PROJECT-Implementation of the Project-Completion" for a table setting forth the Revenue Service Commencement Date, the date of receipt of the Revenue Service Commencement Certificate and the date of receipt of the Final Completion Certificate for each element of the Project.

#### **Description of Project Elements**

The East Corridor (or the University of Colorado A Line) provides improved access to Denver International Airport ("DIA") by connecting DIA to DUS, the hub for the regional rail and bus system and interstate bus and heavy rail infrastructure. The East Corridor is approximately 22.8 miles, extending from its origination station at DUS to a terminal station at DIA, with six intermediate stations in locations throughout the City and County of Denver ("Denver") and the City of Aurora. Pre-COVID-19, the East Corridor average monthly ridership was approximately 677,656 per month, March 2019 through September 2019. During the same reporting period, March 2020 through September 2020, under the then COVID-19 pandemic "Safer-At Home" orders from the Governor of the State of Colorado (the "State"), the East Corridor average monthly ridership has been 241,270 per month. Under COVID-19 conditions and government directives as of the date of this Official Statement, ridership is starting to slowly trend upwards from a low of 130,242 monthly riders in April 2020 to 294,970 monthly riders in September 2020. The East Corridor is expected to provide service to approximately 464,200 riders by 2030 (average monthly ridership).

The Gold Line (or the G Line) connects downtown Denver with neighborhoods and businesses in northwest Denver and the western suburbs. Running from DUS to Pecos Junction, the Gold Line shares track with the NWES. At Pecos Junction, the Gold Line diverges from the NWES and runs west for an additional 7.3 miles through Arvada terminating in Wheat Ridge. Pre-COVID-19, the Gold Line average monthly ridership was approximately 172,258 per month, May 2019 through September 2019. During the same reporting period, May 2020 through September 2020, under the then COVID-19 pandemic "Safer-At Home" orders from the Governor of the State, the Gold Line average monthly ridership has been 51,979 per month. Under COVID-19 conditions and government directives as of the date of this Official Statement, ridership is starting to slowly trend upwards from a low of 48,501 monthly riders in April 2020 to 54,473 monthly riders. The Gold Line is expected to provide service to approximately 228,800 riders by 2030 (average monthly ridership).

The NWES (or the B Line) running between DUS and Westminster is approximately 5.2 miles. The NWES shares an alignment with the Northwest Rail Service (which is not part of the Project), the Gold Line and the DUS to CRMF non-revenue movements of rolling stock. Pre-COVID-19, the NWES average monthly ridership was approximately 42,889 per month, March 2019 through September 2019. During the same reporting period, March 2020 through September 2020, under the then COVID-19 pandemic "Safer-At Home" orders from the Governor of

the State, the NWES average monthly ridership has been 10,902 per month. Under COVID-19 conditions and government directives as of the date of this Official Statement, ridership is starting to slowly trend upwards from a low of 6,955 monthly riders in April 2020 to 15,514 monthly riders in September 2020. The NWES is expected to provide service to approximately 66,000 riders by 2030 (average monthly ridership).

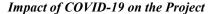
The CRMF covers approximately 24.3 acres and is located northwest of downtown Denver, adjacent to the NWES alignment. The CRMF is fully equipped for maintenance of the rolling stock, with sufficient capacity for the personnel necessary to maintain the infrastructure of the Project. The CRMF also includes facilities to allow for command and control of the commuter rail operations and security with communication links to the District's light rail transit operation control center and security command center. The CRMF is connected to DUS by approximately two miles of access track.

DUS is the hub for many transportation modes in the Denver metro area. The East Corridor, the Gold Line, the North Metro Corridor, the Northwest Rail Corridor, the West Corridor and the Central Platte Valley lines all terminate at DUS, as well as the US 36 BRT corridor and many bus lines. Amtrak and Greyhound services also continue to serve DUS.

Hyundai Rotem USA Corp. (the "Rolling Stock Supplier") provided rolling stock for the Project. These vehicles are "electric multiple units" or "EMUs", which are commuter rail vehicles that are designed to achieve higher speed than light rail vehicles.

A map of the Project is provided below.





Following the initial outbreak of COVID-19 in early March 2020 in the Denver area, the Company encountered limited instances where they were not able to fulfill service requirements due to cancelled trips, primarily due to staff call outs and additional cleaning mitigation measures. At the direction of the District, on April 19, 2020, the Company implemented a reduction of service which modified the B Line to 60-minute headways and the G Line to 30-minute headways, meaning that fewer trains run on these lines. Since the implementation of these service reductions, the O&M Contractor has not missed any trips due to COVID-19 related incidents. The District has not reduced Service Payments due to the reduced service. The Company expects to maintain this reduced level of service on the B Line and G Line through January 2021, which is the next regularly scheduled date for the District to review and update service levels. From March 2020 through the end of October 2020, the Availability Factor has been at or above 100%, signifying that the project has continued to achieve the Concession Agreement performance requirement of a 97.7% or greater Availability Ratio.

The Company and the O&M Contractor work closely with suppliers, fabricators, and subcontractors to ensure that the Project is not affected by the COVID-19 global pandemic. At this time, there are no anticipated delays to receipt of spare parts or inventory related to the COVID-19 outbreak.

The Company submitted a Force Majeure Event notice to the District on March 10, 2020. The notice was intended to act as a reservation of rights in relation to any future cost impact relating to COVID-19; however, to date no actual claims in relation to cost impacts have been filed. The District and the Company have been communicating multiple times per week on mitigating the operational issues related to COVID-19, which have included incremental costs of cleaning the rolling stock and contingent plans to mitigate operator staffing levels in anticipation of missed time. To date, such incremental costs have been approximately \$26,000 per month and have been borne by the O&M Contractor. The Company and the District are currently working collaboratively toward agreement on a Relief Event notice under the Concession Agreement related to these incremental costs. The Company submits recurring reports to the District on the adverse effects of the pandemic on staffing and operations. To date there have been minimal effects by COVID-19 on the O&M Contractor's staffing.

The Company's and the O&M Contractor's management teams continue to work remotely where possible, and when required to be in the office, all staff are instructed to follow the "Pandemic Preparedness and Response Policies and Procedures Manual, Rev 1" issued May 1, 2020 by the O&M Contractor. This manual outlines the guidelines for social distancing and appropriate personal protective equipment, such as face coverings/masks, which are to be worn on the service property when social distancing is not possible. The O&M Contractor also requires every individual to conduct a self-check temperature screening prior to entering the CRMF each day. This includes all employees, contractors, and visitors.

For more information about the COVID-19 impact and response, please see APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT—GENERAL INFORMATION—Certain Considerations Relating to COVID-19."

#### **Overview of Funding**

The total cost of the design and construction of the Project (excluding interest expense) was \$1.9 billion, funded from Construction Payments under the Concession Agreement, proceeds of the Series 2010 Bonds, equity contributions and investment earnings. No further Construction Payments are payable by the District under the terms of the Concession Agreement. The construction of the Project has been completed and no further construction related costs are expected. The Company intends that the ongoing operation and maintenance of the Project will be substantially funded with proceeds of the Service Payments made by the District pursuant to the Concession Agreement.

#### **Equity Contributions**

Pursuant to an equity contribution agreement entered into among the Equity Participants and the Trustee under the Original Indenture, the Equity Participants contributed \$54,249,682 in the aggregate to the Company in order to fund a portion of Project costs.

Equity Participant	Equity Contribution
Aberdeen Global Infrastructure Partners, LP	\$24,412,357
Fluor Enterprises, Inc.	\$5,424,968
John Laing Investments Limited	\$24,412,357
Total	\$54,249,682

#### **Implementation of the Project**

The Concession Agreement governs the relationship between the District and the Company in connection with the financing, operation and maintenance of the Project. For a more detailed description of the Concession Agreement, see "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" and APPENDIX C— "SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

The Project was undertaken by Denver Transit Systems, LLC (the "Design Build Contractor"), a specialpurpose entity formed by Fluor and Balfour Beatty Infrastructure Inc (f/k/a Balfour Beatty Rail Inc.) ("BBRI") pursuant to a "fixed-price/fixed date" Design Build Contract. The remaining performance obligations of the Design Build Contractor under the Design Build Contract include its warranty obligations, which terminate on the later to occur of September 30, 2020, or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020. As of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021. See "THE PROJECT-Implementation of the Project-Completion" and "PRINCIPAL PROJECT AGREEMENTS—Design Build Contract." Rolling stock for the Project was procured by the Design Build Contractor under the Rolling Stock Supply Contract with the Rolling Stock Supplier (the "Rolling Stock Supply Contract"). As of the date of this Official Statement, the remaining performance obligations of the Rolling Stock Supplier are limited to its warranties of the Rolling Stock, which are set to terminate for the Car Structure and Truck Frame, on January 5, 2033, and for a general warranty on one Rolling Stock Car, on January 5, 2021. For the remaining performance obligations under the Rolling Stock Supply Contract, see "PRINCIPAL PROJECT AGREEMENTS-Rolling Stock Supply Contract." The Project is being operated and maintained by Denver Transit Operators, LLC (the "O&M Contractor"), a special-purpose entity formed by Fluor, BBRI and Alternate Concepts, Inc., pursuant to an Operation and Maintenance Contract (as amended, supplemented or otherwise modified from time to time, the "O&M Contract") that provides for the same term as the Concession Agreement. For a more detailed description, see "PRINCIPAL PROJECT AGREEMENTS-O&M Contract" and APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

#### **Completion**

The University of Colorado A Line had a Revenue Service Commencement Date of April 22, 2016, was awarded the Revenue Service Commencement Certificate in September of 2018, and was awarded the Final Completion Certificate in August of 2019. The B Line had a Revenue Service Commencement Date of July 25, 2016, was awarded the Revenue Service Commencement Certificate in October of 2017, and was awarded the Final Completion Certificate in May of 2018. The G Line was awarded the Revenue Service Commencement Certificate in March of 2019, had a Revenue Service Commencement Date of April 26, 2019 and was awarded the Final Completion Certificate on November 16, 2020. Construction of the Project has been completed and all three commuter rail lines which comprise the Project have each been awarded a Final Completion Certificate.

	East Corridor ("A Line")	NWES ("B Line")	Gold Line ("G Line")
Revenue Service Commencement Date	April 22, 2016	July 25, 2016	April 26, 2019
Date of Revenue Service Commencement Certificate	September 6, 2018	October 20, 2017	March 31, 2019
Date of Final Completion Certificate	August 2, 2019	May 4, 2018	November 16, 2020

The Revenue Service Commencement Date for each Commuter Rail Project was the date on which the Revenue Service Commencement Requirements were satisfied, as certified by the Independent Engineer. The Revenue Service Commencement Certificate date means the date on which the Revenue Service Commencement Certificate date means the date on which the Revenue Service Commencement Certificate at the B Line and the G Line was the date on which the Final Completion Date for each of the University of Colorado A Line, the B Line and the G Line was the date on which the Final Completion Requirements for the applicable Commuter Rail Project were satisfied, as certified by the Independent Engineer, as set forth in the applicable Final Completion Certificate.

There were delays with respect to achievement of the respective Revenue Service Commencement Certificates and Final Completion Certificates for the University of Colorado A Line and the B Line, however, revenue service was achieved on a timely basis. With respect to the G Line, achievement of G Line revenue service and receipt of the Revenue Service Commencement Certificate and the Final Completion Certificate were delayed. The University of Colorado A Line, the B Line and the G Line are currently fully operational and each Commuter Rail Project has received its respective Revenue Service Commencement Certificate and Final Completion Certificate.

#### **Performance Security and Warranties**

The table on the following page summarizes the performance security that the Design Build Contractor provided the Company pursuant to the Design Build Contract, the performance security provided under the Rolling Stock Supply Contract, and the performance security that the O&M Contractor provides the Company pursuant to the O&M Contract. The warranty obligations of the Design Build Contractor under the Design Build Contract terminate on the later to occur of September 30, 2020, or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020. As of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021. For more detailed information about this performance security, see "PRINCIPAL PROJECT AGREEMENTS," APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT," and APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

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#### **O&M** Contract **Design Build Contract** Guaranties: Joint and several guaranties from Fluor Corporation and Balfour Beatty, LLC Guaranties: Joint and several guaranties from Fluor Corporation and Balfour Beatty, LLC (with a financial guaranty from Balfour Beatty plc) for all payment and performance (with a financial guaranty from Balfour Beatty plc) for all payment and performance obligations of the Design Build Contractor. obligations of the O&M Operator. Concessionaire Construction Security: A warranty bond equal to \$160,189,841, which • O&M Letter of Credit: A letter of credit of \$26,763,286 as of the date hereof, adjusted terminates on the later of September 30, 2020, or one year from the date of any warranty annually for inflation (the "Required Security Amount"), to remain in effect until at least the claims in the case of any repairs or replacements made prior to September 30, 2020. As of the final maturity of the Bonds and subject to certain adjustment and replenishment requirements. date of this Official Statement, there is one outstanding warranty claim for a construction After the end of the Warranty Period, a letter of credit or performance bond equal to 150% of paving repair made on August 5, 2020. The warranty period for such repair will terminate on the estimated cost of unresolved warranty claims will continue until resolution of claims. August 5, 2021. • Renewal Works Security: Commencing with the first year of scheduled Renewal Work and Limitation on Liability: Maximum aggregate liability on damages is capped at 45% of the continuing until all Bonds have been repaid, in each year if (a) the value of forecasted contract sum, subject to certain carve-outs including abandonment. renewal costs less the budgeted renewal costs less amounts on deposit in the renewal reserve account is greater than \$1,000,000 or 10% of the budgeted renewal costs; (b) the undrawn Warranty: Completed design and construction work is free of defects (including latent amount of the O&M Letter of Credit less the amount calculated in clause (a) is less than 75% defects) and deficiencies in design, materials, equipment and workmanship, the Rolling Stock of the Required Security Amount; and (c) certain performance measurements thresholds have is good quality and conforms to the Applicable Requirements, the Applicable Standards and not been achieved, O&M Contractor provides a letter of credit equal to the amount calculated the Project Requirements free of defects in material, equipment and workmanship, and the in clause (a). final as-built drawings and documentation are accurate and complete and comply with applicable Contract Documents and accurately reflect the condition of each Commuter Rail Limitation on Liability: Maximum aggregate liability is limited to \$67,978,884 (as of 2010), Project as of the applicable Final Completion Date, such warranties to continue during the adjusted annually for inflation, subject to certain carve-outs including abandonment. This Warranty Period The sole remaining warranty with respect to the Gold Line Project (the aggregate liability limit on damages is sized to cover approximately 18 months of operations construction paving repair made on August 5, 2020) will terminate on August 5, 2021. and maintenance costs including renewal works. However, any warranties from third-party suppliers, manufacturers or Subcontractors Warranty: The Services will be performed by qualified personnel, any repair or replacement (including the Rolling Stock Supplier) longer than the Warranty Periods (including the of parts or components as part of the Services will be performed in a workmanlike manner Rolling Stock Warranty Period) are passed through to the Company. using good quality components and materials, respecting the common commuter rail operator For further information, see "PRINCIPAL PROJECT AGREEMENTS-Design Build Contract." industry practices, and the Services will satisfy the required performance standards described in the O&M Contract. In addition, commencing from the Warranty Period and through the end of the statute of repose period mandated by applicable law, the O&M Contractor will be **Rolling Stock Supply Contract** responsible for all costs and expenses resulting from defects, including latent defects, to the Design Build Contractor's work. For further information, see "PRINCIPAL PROJECT Guaranty: Guaranty from Hyundai Rotem Company. AGREEMENTS-O&M Contract." Warranty: The Rolling Stock Supplier warrants that (a) the work it performs under the Rolling Stock Supply Contract will comply strictly with the provisions thereof and all specifications, drawings and standards referred to in such contract or thereafter furnished by the Design Build Contractor, and that such work will be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by the Rolling Stock Supplier and (b) all materials, equipment and supplies furnished by it for the work will be new, merchantable, of the most suitable grade and fit for their intended purposes, in each case of (a) and (b) until the following dates: for Car Structure and Truck Frame, January 5, 2033; and for a general warranty on one Rolling Stock Car, January 5, 2021. For further information, see "PRINCIPAL PROJECT AGREEMENTS-Rolling Stock Supply Contract."

#### Design Build Contractor, O&M Contractor and Rolling Stock Supplier Payment and Performance Security and Warranties

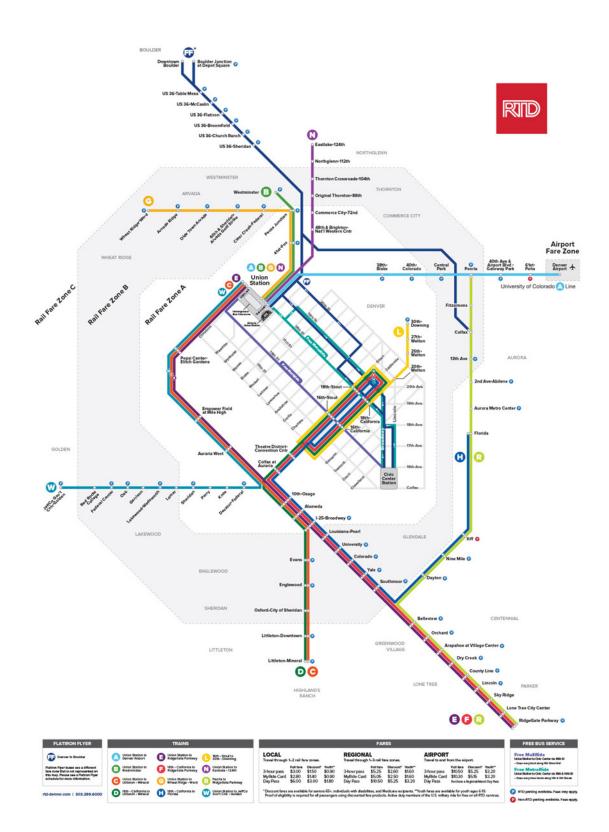
#### **Overview of Denver FasTracks Plan**

The Project is an integral part of the larger Denver FasTracks Plan, the District's comprehensive plan to build and operate commuter rail lines and to expand and improve light rail service, bus service and park-n-rides throughout the Denver metropolitan region (the "FasTracks Plan"). The FasTracks Plan consists of nine rail corridors (new or extended), one bus rapid transit ("BRT") corridor, redevelopment of DUS, the CRMF and an expanded light rail maintenance facility. The FasTracks Plan adds approximately 94 miles of commuter rail (University of Colorado A Line, G Line, N Line and B Line), approximately 28 miles of light rail (Southeast and Southwest Corridor Extensions, Central Corridor Extension, R Line and W Line), Park-n-Ride improvements at and/or relocations of existing Park-n-Ride lots along U.S. 36 (U.S. 36 BRT – Phase 1), and 18 miles of BRT (U.S. 36 BRT – Phase 2). The District received significant amounts of funding for its operations, including implementation of the FasTracks Plan from sales tax revenues authorized by a November 2004 ballot referendum that authorized the District to levy and collect an additional 0.4% sales tax for the purposes of developing and expanding public transportation. For additional information regarding the District's FasTracks Plan, see APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT—THE SYSTEM—FasTracks."

The District's transit network, including the FasTracks Plan, is shown on page iv and below.

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## DISTRICT NETWORK OVERVIEW



## **PROJECT PARTICIPANTS**

#### **Regional Transportation District**

The District was created in 1969 by the State General Assembly as a mass transportation planning agency for the Denver metropolitan area. The District is a public body politic and corporate and a political subdivision of the State, organized and existing under the terms of the Act. In 1974, the Act was amended, and the District became an operating entity charged with the responsibility for developing, maintaining and operating a mass transportation system for the benefit of the inhabitants in its service area. The District's service area encompasses portions of an eight-county region comprising the Denver metropolitan area. Over one-half of the population of the State currently resides in the Denver metropolitan area. The District's outstanding indebtedness is currently rated as follows (in each case, by Moody's; Standard & Poor's; and Fitch, respectively): 0.6% Senior Debt: Aa1/AAA/AA; FasTracks Bonds: Aa2/AA+/AA; and Certificates of Participation: A1/AA-/AA-. For additional information regarding the District, see APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT."

#### Company

The Company is a Delaware limited liability company that was formed on April 26, 2010 for the purpose of undertaking the Project. DTH is the direct holder of 100% of the outstanding membership interests of the Company. Fluor is the holder of 10% of the outstanding membership interests of DTH and each of John Laing and Aberdeen is an indirect holder of 45% of the outstanding membership interests of DTH.

#### **Equity Participants**

The following summaries of the Equity Participants are included solely to provide any potential investor in the Bonds with background regarding the ultimate ownership of the Company. Potential investors in the Bonds should note that, as described elsewhere in this Official Statement, the Bonds are payable from payments received from the Company under the Loan Agreement and the Company's obligations thereunder are non-recourse obligations of the District and in no event will all or any of the Equity Participants have any obligation with respect to any payment related to the Bonds.

#### Aberdeen.

**Overview**. Aberdeen Infrastructure Investments (No 4) USA, LLC is an investment holding company which was set up to facilitate Aberdeen Global Infrastructure Partners, LP's ("Aberdeen") investment in the Company. Aberdeen is an AUD 113 million primary infrastructure fund which successfully closed in September 2013 (and subsequently expanded in December 2013 by AUD 26.1 million), managed by a subsidiary of Standard Life Aberdeen plc ("Standard Life Aberdeen"). Aberdeen holds 4 investments in high quality PPP/P3 projects.

Standard Life Aberdeen is a leading global investment company, managing assets for both institutional and retail clients from offices around the world. Standard Life Aberdeen employs 6,000 people, with offices in 54 locations worldwide. Headquartered in Scotland, it has around 1.1 million shareholders and is listed on the London Stock Exchange. Standard Life Aberdeen has more than 30 years of experience to draw on and has seen three decades of expansion through growth and acquisition. Over the years Standard Life Aberdeen has expanded through a combination of acquisition and organic growth. Aberdeen Standard Investments ("ASI") is the brand of the combined investment businesses of Aberdeen Asset Management and Standard Life Investments, following their merger on 14 August 2017. ASI offers a comprehensive range of developed and emerging market equities and fixed income, multi-asset, real estate and private markets solutions. ASI is one of the largest investment houses globally, with:

- Combined assets under management of £545 billion (at 31 Dec 2019)
- Highly diversified businesses by revenue, asset class, client and geography

*Experience.* Since 1998, ASI's Concession Infrastructure Team has committed over USD 2.7 billion (GBP 2.2 billion) of equity in 124 social and economic infrastructure investments.

The team can draw on a wealth of experience on projects that ASI has had involvement with over the years. Some of ASI's notable achievements in transportation projects include:

• THE I-77 MOTORWAY IN NORTH CAROLINA. ASI achieved financial close for this \$646 million project in 2015. ASI partnered with Cintra, John Laing and GCM in the development of the P3 component of the 25-mile project including the design, build, financing and maintenance of three road sections – a 15-mile central portion converting the existing HOV facility into two HOT lanes from I-85 to exit 28 north, the 9-mile extension of HOT lanes north from exit 28 to exit 36 and the extension south of the HOT lanes from I-85 to downtown Charlotte.

• THE CANBERRA LIGHT RAIL PROJECT IN AUSTRALIA. ASI achieved financial close for this \$680 million project in 2016. ASI partnered with Pacific Partnerships, Mitsubishi Corporation and John Holland to develop a 12km light rail route linking Canberra's city centre with the fast growing suburbs of Gungahlin. The project includes the design and construction of approximately 13 stops, a depot facility, signals, associated road works, preparatory works and landscaping, design and delivery of light rail vehicles and ongoing operation and maintenance of the light rail system. Completion of the project was achieved in April 2019.

• THE NEW GENERATION ROLLING STOCK PROJECT IN QUEENSLAND, AUSTRALIA. ASI achieved financial close for this \$1.9 billion project in 2014. ASI partnered with Bombardier Transportation, John Laing and ITOCHU Corp to develop this project to deliver 75 six-car electric multiple-units to replace the older stock. The project also includes the design and build of a new depot at Wulkuraka near Ipswich, Queensland, and the provision of simulator equipment for crew training and the on-going maintenance of the new rolling stock.

Project	Sector	Location	Financial Close	Project Size (\$m)
AP-46 Autopista del Guadalmedina	Road	Spain	2020	278
Silvertown Tunnel PFI	Road	United Kingdom	2019	1,554
A150 motorway PPP	Road	France	2018	253
A88 motorway PPP	Road	France	2018	385
A16 Rotterdam highway PPP	Road	Netherlands	2018	872
Afsluitdijk PPP	Waterway	Netherlands	2018	1,025
D4/R7 road PPP	Road	Slovakia	2017	900
A1 motorway PPP	Road	Poland	2017	1,400
M6 Phase 3 (Mecsec) PPP	Road	Hungary	2017	950
Interstate I77 P3	Road	USA	2015	646
M6 Phase 1 (Duna) PPP	Road	Hungary	2015	482
M6 Phase 2 (Tolna) PPP	Road	Hungary	2015	518
Canberra Metro PPP	Rail	Australia	2016	695
M8 M73 M74 Motorway PPP	Road	United Kingdom	2014	670
New Generation Rollingstock Queensland PPP	Rail	Australia	2014	1,425
Transit Hubs PPP	Rail	Spain	2012	285
Sheffield Highways PFI	Road	United Kingdom	2012	1,100
Birmingham Highways PFI	Road	United Kingdom	2010	605
New Tyne Tunnel PFI	Road	United Kingdom	2008	550
N8 Rathcormac / Fermoy Motorway	Road	Ireland	2004	355

The table below includes a selection of ASI's transportation project experience:

PPP				
A28 Rouen-Alençon Motorway PPP	Road	France	2002	1,225

*Fluor.* Information about Fluor's transportation experience and its financial capability, see "PROJECT PARTICIPANTS—O&M Contractor—Fluor."

#### John Laing.

**Overview**. John Laing Investments Limited ("John Laing") holds a 45% participation in the Company and is the wholly owned subsidiary of John Laing Limited ("JLL"), a limited company incorporated in England and Wales. JLL is an international originator, active investor and manager of infrastructure projects. Its business is focused on major transport, social and environmental infrastructure projects awarded under governmental public-private partnership (PPP) programs, and renewable energy projects, across a range of international markets including the UK, Europe, Asia Pacific, North America and Latin America. JLL's North American activities are managed by 32 professionals located in Toronto, New York, Los Angeles, Denver, Orlando, Detroit and Boston, and supported by a global team of over 150 employees. All US Dollar figures shown in this section are based off of the closing USD/GBP Exchange Rate of USD1.326:GBP1 on December 31, 2019.

*Experience.* JLL is an experienced rail investor, which has invested, directly or indirectly through intermediary holding companies, in the seven rail projects identified below. To date, John JLL has invested in fifteen (15) P3 and renewable energy projects in North America since 2010. As of fiscal year-end December 31, 2019, JLL had \$417 million in financial resources available to fund project investments, and net assets of \$2.2 billion.

Since making its initial infrastructure investment back in 1969, JLL has invested in over 150 infrastructure projects. As of fiscal year-end 2019, JLL's portfolio comprised of investments in 48 infrastructure projects and generated \$190 million in proceeds from the disposal of its equity investments in infrastructure projects as well as \$76 million in cash flow yield from the existing operating project portfolio. Total commitments to new investments in 2019 was \$244 million, including \$109 million in P3 assets and \$117 million in North America.

Previous experience and roles relevant to this Project are included in the table below:

<u>Project</u>	<b>Location</b>	Year Closed	<u>Sector</u>
Hurontario Light Rail Project	Toronto, CAN	2019	Rail
Ruta del Cacao	Colombia	2019	Road
I-75 Highway	Michigan, USA	2018	Road
MBTA Fare Collection	Massachusetts, USA	2018	Technology
A16 Motorway	Netherlands	2018	Road
Melbourne Metro	Australia	2017	Rail – Other
Transform 66	Virginia, USA	2017	Road
A-6 Almere	Netherlands	2016	Road
I-77 Express Lanes	North Carolina, USA	2015	Road
Sydney Light Rail	Australia	2015	Rail

I-4 Ultimate Project	Florida, USA	2014	Road
Intercity Express Programme Phase 2	United Kingdom	2014	Rail – Rollingstock
New Generation Rollingstock	Australia	2014	Rail – Rollingstock
Intercity Express Programme Phase 1	United Kingdom	2012	Rail – Rollingstock
A15 Motorway	Netherlands	2010	Road
A1 Motorway	Germany	2008	Road
A1 Road	Poland	2004	Road
City Greenwich Lewisham (CGL) Light Rail Link	United Kingdom	2001	Rail

#### **Design Build Contractor**

The Company contracted with Denver Transit Systems, LLC to design and construct the Project. Denver Transit Systems, LLC (the "Design Build Contractor") is a 50/50 joint venture between Fluor and Balfour Beatty Infrastructure Inc (f/k/a Balfour Beatty Rail Inc.) ("BBRI"), for which Fluor acts as the managing partner. For additional information about the Design Build Contract, see "PRINCIPAL PROJECT AGREEMENTS—Design Build Contract," for information about Fluor's transportation experience and its financial capability, see "PROJECT PARTICIPANTS—O&M Contractor—Fluor" and for information about BBRI's rail project experience, see "PROJECT PARTICIPANTS—O&M Contractor—BBRI."

#### **Design Build Guarantor**

Fluor Corporation and Balfour Beatty, LLC (collectively, the "Design Build Guarantors") have provided a guaranty in favor of the Company, which guarantees full payment and performance of all obligations owed to the Company under the Design Build Contract in the event the Design Build Contractor fails to perform. The obligations of the Design Build Guarantors are joint and several. In addition, Balfour Beatty plc guarantees the payment obligations of Balfour Beatty, LLC pursuant to a Deed of Financial Guarantee, dated as of July 9, 2010, in favor of the Company. See further information on Fluor Corporation, Balfour Beatty, LLC and Balfour Beatty plc in "—O&M Contractor—Fluor" and "—"O&M Contractor—BBRI."

#### **O&M** Contractor

The Company has contracted with Denver Transit Operators, LLC (the "O&M Contractor") to provide commuter rail network operations and maintenance for the Project for the term of the Concession Agreement. Alternate Concepts, Inc. ("ACI"), BBRI and Fluor are the members of Denver Transit Operators, LLC and are providing the rail network operations and maintenance for the Project.

**ACI.** ACI, established in 1989 and based in Boston, Massachusetts, is a transportation operations and maintenance firm committed to managing multi-modal public and private transportation services, including light rail, rapid transit, commuter rail and bus. ACI was co-founded by James. F. O'Leary, who previously served as the General Manager of the Massachusetts Bay Transportation Authority during an unusually active period of expansion and modernization of the nation's oldest public transit system. ACI has grown to be one of the largest U.S.-based private operators of passenger rail services, with an outstanding record of service quality, safety, and customer satisfaction. The services provided by ACI include operations; maintenance; safety; customer service; fare collection; quality assurance; human resources; performance monitoring and reporting; abnormal and emergency operation; training; mobilization and testing and commissioning.

Prior to the COVID-19 pandemic, ACI moved over 172,000 trains that carry over 28 million passengers annually. ACI's experience includes operation and maintenance of the nation's first-ever transit system that was delivered through a Design-Build-Operate-Maintain (DBOM) contract (Tren Urbano, Puerto Rico) as well as the first two Design-Build-Finance-Operate-Maintain (DBFOM) transit projects (Eagle P3, Denver and Purple Line P3, Maryland) in the U.S. In these projects, ACI provided early input on system design, improving the long-term operational efficiency and maintainability of those systems.

Among the significant transit projects on which ACI has been actively engaged are the following:

Project/Client	Description/Role
Tren Urbano Puerto Rico Highway and Transportation Authority (Puerto Rico, USA)	Partner in a joint venture to provide O&M service on system comprised of 17-km heavy rail track, 16 stations, 74 Siemens heavy rail transit vehicles, one administrative and maintenance facility, and one yard. Services include train operations and dispatch, maintenance of way, vehicle maintenance, signal and communications, facility maintenance, station operations, revenue management, safety and security, and customer service.
Light Rail Transportation Services/Valley Metro Rail (Arizona, USA)	O&M provider operation and dispatch of light rail services on 26-mile light rail system serving 34 stations.
Hartford Line/ Connecticut Department of Transportation (Connecticut, USA)	Partner in a joint venture to provide passenger rail service on a 62-mile corridor between New Haven, CT and Springfield, Ma. Service operates 32 weekday and 26 weekend train trips, serving over 630,000 passengers in its first year of service. Services include train operations, safety, training, crew calling, facility management, customer service, revenue management, and marketing.
Purple Line P3 Light Rail/Maryland Transit Administration (Maryland, USA)	During design build, part of a consortium to support decision-making, facilitates early issue resolution, and focuses on life-cycle cost, and will promote overall integration and design consistency. Upon completion of the design build period, part of a consortium for operations and maintenance on 34 miles of track, 21 stations, 26 light rail vehicles, and two yards, including on maintenance/dispatch facility to provide train operations, maintenance of way, vehicle maintenance, signals and communications, facilities maintenance, safety and training.
California High Speed Rail Early Train Operator/California High Speed Rail Authority (California, USA)	As a subcontractor, to provide a high speed rail planning and operations perspective and as the future train operator, as decisions are being made by the California High Speed Rail Authority about design of track and systems, procurement of rolling stock, and service development plans, among other policy matters. The contract began in 2017 and is expected to last until 2023.
Green Line Train Protection System/Massachusetts Bay Transportation Authority (Massachusetts, USA)	Subcontractor to BBR supporting the design for the installation of the Green Line Light Rail onboard train equipment.

**BBRI.** BBRI provides asset management services for both freight rail and rail transit throughout the U.S. and worldwide through its ultimate parent company, Balfour Beatty, plc. Founded in 1909, Balfour Beatty, plc is a global engineering, construction, services and investment organization headquartered in London, England specializing in large infrastructure and building programs. Balfour Beatty plc is publicly traded on the London Stock Exchange (BBY.L). BBRI provides its maintenance services using in-house personnel and equipment as well as specialized management software and analytical tools. As a vertically integrated company, Balfour Beatty, plc and its affiliates often provide total-life-cycle engineering, construction, and maintenance services.

Based in Atlanta, Georgia, BBRI is a national leader in track work and transit systems. BBRI has played a significant role in the various projects detailed in the table below:

Project/Client	Description/Role
METRO Gold Line	Systems Provider for \$92 million extension of the Metro Gold Line in Los Angeles,
East Side Extension	CA from Union Station to Pomona and Atlantic
	BBRI will design, provide, install and test all system components, including signaling, communications, traction power, and the overhead catenary system
Harbin Dalian Project (China)	Systems Provider for \$154 million, supplying key traction electrification equipment on the 590-mile railway line
Northeast Corridor Electrification Project	Systems Provider for \$485 million, electrification of 360 line track miles, 322 main track miles, 12 miles of sidings, and 26 miles of yard track
Burlingame Station Outboard Platform Improvements	Systems Provider as part of a joint venture, BBRI was responsible for upgrades to the signal and communication systems and track rehabilitation at Burlingame Station (Burlingame, CA), as well as track rehab at Broadway station

# Fluor.

Fluor is a member of the O&M Contractor, providing financial support, as well as an effective transition from the design-build phase of the Project to the operations and maintenance phase of the Project. Fluor is a subsidiary of Fluor Corporation, a global engineering, procurement, fabrication, construction and maintenance company. Fluor Corporation employs approximately 45,000 people with projects and offices on six continents. Fluor Corporation has executed more than \$40 billion of design-build projects over the past ten years.

Fluor Corporation (NYSE: FLR) reported \$14.3 billion in revenue in 2019. Fluor Corporation had total assets of \$8.0 billion, total equity of \$1.6 billion and total debt of \$1.7 billion as of December 31, 2019. Fluor Corporation's current credit ratings are BBB- from S&P and Ba1 from Moody's.

Fluor Corporation's history of engineering and constructing transportation projects includes both designbuild and design-build-finance-operate-maintain projects. The following highlighted projects show where subsidiaries of Fluor Corporation acted as, or still are, a concession partner or managing partner of the design-build contractor:

Project/Client	Description/Role
LAX Automated People Mover	The \$2.7 billion Automated People Mover (APM) Project at Los Angeles International Airport (LAX) (the Project) is the centerpiece of a \$5 billion Landside Access Modernization Program at LAX. The Project scope includes six stations along a 2.25-mile, elevated dual guideway, the APM operating system and vehicles, and a 7,000 square meter maintenance and storage facility (MSF). The 30-year term includes an approximately five year design and construction period, followed by a 25-year operations and maintenance period. Fluor will participate in every phase of the 30-year project. Fluor is an equity member of the LAX Integrated Express Solutions (LINXS) development team, lead
	member of the design-build joint venture team as well as the operations and maintenance joint venture.
Rt. Hon. Herb Gray Parkway	This greenfield project includes the design, build, financing, operations and maintenance of an 11 kilometer (6.8-mile), six-lane, below-grade freeway that includes 11 tunnels. The project was opened to traffic in 2015 and is fully operational. Fluor is an equity investor and managing partner of the design-build contractor.

High Speed Line - Zuid	This project is located in the Netherlands. It is a 62-mile rail infrastructure project with a capital cost of \$1.43 billion for the superstructure and all systems (the government finances the substructure). A subsidiary of Fluor Corporation led a special-purpose vehicle (InfraSpeed) to design, build, finance and maintain the project. Construction was completed in 2006. InfraSpeed has a 25-year management and maintenance obligation.
E-470	Design-builder, contractor and sponsor of \$323 million project for roadway, bridges, toll facilities, and maintenance facilities in Colorado. First privately financed design-build toll highway facility in the United States to reach construction.
Exposition Light Rail Transit Project	Fluor was a member of the joint venture that designed and built the \$690 million Exposition Metro Line, a light rail transit (LRT) line in Los Angeles, California. Phase 1 of the project extended the line 8.5 miles from downtown Los Angeles to Culver City and included design and construction of trackwork, nine stations, a 2,300-foot cut-and-cover tunnel, two Park & Rides, and parkway landscaping along the corridor.

#### **O&M** Guarantor

Fluor Corporation and Balfour Beatty, LLC have provided a guaranty in favor of the Company, which guarantees full payment and performance of all obligations owed to the Company under the O&M Contract in the event the O&M Contractor fails to perform. The obligations of the O&M Guarantors are joint and several. In addition, Balfour Beatty plc has provided a payment guaranty. See further information on Fluor Corporation, Balfour Beatty, LLC and Balfour Beatty plc in "—O&M Contractor—Fluor" and "—O&M Contractor—BBRI."

# **Balfour Beatty plc**

Balfour Beatty plc is headquartered in London, UK and works on major infrastructure assets across their whole lifecycle: from conception, funding, program management and design to construction, systems integration, operation and maintenance.

Balfour Beatty plc's contracting business is a leader across a wide range of construction and related disciplines in the UK and in selected overseas markets. Balfour Beatty plc has maintained long term relationships with a wide range of blue-chip customers and is highly cash generative. Balfour Beatty's construction services provide building, design, construction management, refurbishment and fit-out services. As an infrastructure investor, Balfour Beatty plc operates a portfolio of long-term concessions in the UK and long-term military accommodation concessions in the U.S.

In 2019, Balfour Beatty's order book was £14.3bn, revenue including joint ventures and associates was £8.4bn, and pre-tax profit was £138m.

Balfour Beatty LLC is a wholly owned subsidiary of Balfour Beatty plc.

# Hyundai-Rotem

Hyundai-Rotem, USA ("Rotem USA"), is headquartered in Philadelphia, Pennsylvania, and is the American subsidiary of Hyundai Rotem Co. ("Rotem"), a division of the Hyundai Motor Group. Rotem was formed when Hyundai took over the rolling stock manufacturing capabilities of Daewoo, making it the sole rolling stock manufacturer in South Korea.

Rotem's main manufacturing facility is located in Changwon, South Korea with design offices in Seoul. Rotem has a global staff of approximately 3,800, including 700 devoted solely to research and development. Rotem

specializes in the manufacture of light rail vehicles (LRV), electric multiple units (EMU), diesel multiple units (DMU), high-speed trains, and magnetically levitated vehicles supplied to the global rail and transit market. Rotem USA is the Rolling Stock Supplier for the Project and Hyundai Rotem Company provides the parent guaranty required under the Rolling Stock Supply Agreement.

Silverliner V EMUs	South Eastern Pennsylvania Transportation Authority	120 cars	Delivered 2010
MBTA Bi-Level Coaches	Massachusetts Bay Transportation Authority	75 cars	Delivered 2013
Metrolink Bi-Level Coaches	Southern California Regional Rail Authority	70 cars	Delivered 2013
Metrolink Bi-Level Cab Cars	Southern California Regional Rail Authority	56 cars	Delivered 2013
SFRRA Bi-Level Cars	South Florida Regional Rail Authority	14 cars	Delivered 2013
Denver Eagle EMUs	Regional Transportation District – Denver	66 cars	Delivered 2014

Other Relevant Projects. Rotem USA manufactured the following rail vehicles:

Rotem USA was awarded an additional contract in 2019 with MBTA to supply 80 additional bi-level rail vehicles. These will be manufactured in Korea with testing and commissioning in Boston, USA.

Rotem USA maintained a testing and commissioning team in Denver supporting the Project from 2014 through 2017. They also maintained a warranty team from 2016 supporting the general car warranty work, which is almost completed.

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# PAYMENTS UNDER THE CONCESSION AGREEMENT

#### General

Pursuant to the Concession Agreement, the District makes monthly Service Payments to the Company for operating and maintaining the Project. The Concession Agreement may be terminated as the result of the occurrence of a termination event as set forth in the Concession Agreement, in which case the Concession Agreement provides for the Company to be paid the Applicable Termination Amount. The Applicable Termination Amount to be paid to the Company will vary depending upon the specific termination event and circumstances that were the cause of the termination. Certain events that constitute Relief Events pursuant to the Concession Agreement will entitle the Company to receive compensation from the District related to certain incurred costs.

### Service Payments

**Overview.** The Company is entitled to receive Service Payments on a monthly basis. The Service Payments are the primary source of revenue to the Company during the operation of the Project. Pursuant to the Concession Agreement, the Service Payment obligation due is based on operating performance and availability of the Project and is not dependent on ridership levels or farebox collections.

Service Payments have two components: the TABOR Portion, which has been structured to exceed scheduled debt service on the Series 2020 Bonds in each year of full operations, and the RTD Appropriation Obligation, which has been structured to cover operations and maintenance costs of the Project.

*Calculation of Service Payments.* The Service Payment is calculated based on a fixed base monthly amount for each of the Commuter Rail Services, adjusted for the Availability Factor, Performance Deductions, and Special Events Adjustments. Pursuant to the Concession Agreement, the Service Payment can be reduced through the application of the Availability Factor and Performance Deductions, due to the operating performance of the Commuter Rail System. The Service Payment cannot, however, be reduced based upon ridership levels.

The Availability Factor is determined by the Availability Ratio, which reflects performance of the Commuter Rail Service and depends on the actual car miles of Rolling Stock as compared to the scheduled car miles, station downtime hours as compared to the scheduled station downtime hours and the trains' on-time performance based on the total number and duration of deviations from the Operating Timetable. The Availability Factor, as calculated under the Concession Agreement, cannot equal less than 80% in any given period. An Availability Ratio of less than 80% (and 85% in six or more months of any eight-month period), however, in certain circumstances can result in a Concessionaire Termination Event. Since January 2017 and through October 2020, the Availability Factor has been at or above 99% in every period.

The Availability Adjusted Base Annual Service Payment will be reduced by any applicable Performance Deductions pursuant to the Company's obligation to meet specified operating performance standards. The failure to meet these standards will entitle the District to levy performance deduction points against the Company, which are used to calculate the applicable Performance Deductions. The Performance Deduction Percentage, as calculated under the Concession Agreement, should not be greater than 5%. A Performance Deduction Percentage that exceeds 3% of the Adjusted Base Service Payment, in six or more months in any eight-month period, can, however, result in a Concessionaire Termination Event. The application of both the 80% Availability Factor and the 5% Performance Deduction Ratio in the same period should not result in Service Payments being reduced by more than approximately 25% in that period. There has only been one instance of Performance Deductions being imposed to date, and this occurred in April of 2016.

The Concession Agreement provides that Service Payment deductions related to the Availability Factor and any Performance Deductions are first to be applied to the portion of the Service Payment that constitutes an RTD Appropriation Obligation before being applied to the TABOR Portion. Since the TABOR Portion, as currently structured, is not calculated to exceed 75% of the anticipated Service Payment in any one year, the payment of the scheduled TABOR Portion, as currently calculated, should not be affected by the application of the Availability

Factor and Performance Deductions. However, the TABOR Portion could potentially be reduced to cover indemnity payments owed to the District by the Company.

The Service Payment may also be increased in any month by certain defined applicable Special Events Adjustments, which are increases based on special events generating extraordinary usage demand. See "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement—Termination of the Concession Agreement" and APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT— Termination of the Concession Agreement."

**Payment to O&M Contractor Subject to Reduction.** The O&M Contract provides that the payment of the Monthly Operator's Fee thereunder is only payable to the extent that the Company receives the Service Payment (or portion thereof) from the District that corresponds to the Monthly Operator's Fee, and that the Service Payments are the only source of funds to pay the Monthly Operator's Fee. Consequently, reductions in the Service Payment due to the application of the Availability Factor and the Performance Deductions, as currently calculated, are passed through to the O&M Contract. Any dispute relating to the payment of a Monthly Operator's Fee, including disputes relating to the reductions, will be resolved pursuant to the dispute resolution procedures of the O&M Contract. If the Company and the O&M Contractor are unable to resolve any such dispute, and the Company has a right under the Concession Agreement to seek payment or other relief from the District with respect to such dispute, the O&M Contractor is entitled to bring in the Company's name a reasonably grounded claim against the District to resolve the dispute for its own benefit under the O&M Contract. Any resolution to a dispute that has been elevated to a claim against the District under the Concession Agreement will be binding on the Company and the O&M Contract.

### **TABOR Portion**

**Overview**. The Concession Agreement provides that the TABOR Portion is secured by a subordinate pledge of the RTD's Sales Tax Revenues as described below. The Concession Agreement provides that any TABOR Portion payable pursuant to the terms of the Concession Agreement that is not paid due to insufficiency of RTD Sales Tax Revenues will also constitute an RTD Appropriation Obligation, payable from available funds of the District, but subject to annual appropriation by the District. Failure to pay the TABOR Portion, when due, shall constitute an RTD Termination Event under the Concession Agreement.

In the event of a termination of the Concession Agreement, the Company will be entitled to receive certain termination payments. Pursuant to the Concession Agreement, an "Additional TABOR Portion" may be pledged to satisfy the termination payments owed to the Company by the District. In accordance with the Concession Agreement, the Company may provide an Additional TABOR Portion Notice to the District setting forth a schedule of additional principal and interest payments to be made by the District out of available RTD Sales Tax Revenues and in accordance with the 2004 Election (as defined below), such payments to constitute the Additional TABOR Portion. Furthermore, the Company has covenanted in the Loan Agreement to provide the Additional TABOR Portion Notice to the District prior to the effective date of any legislation or constitutional amendment that may, in the reasonable judgment of the Trustee or the Company, adversely affect the District's ability or obligation to pay the Additional TABOR Portion. See APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT" and APPENDIX H—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT."

During the period from the Termination Date through the Expiry Date, any termination payments that have not been paid in full will continue to be secured by a pledge of the RTD Pledged Revenues and payable from the TABOR Portion and any Additional TABOR Portion, in accordance with the terms of the Concession Agreement (collectively defined as the "TABOR Portion" unless context otherwise requires). Further, the Concession Agreement provides that any portion of an applicable termination payment that is not fully satisfied by payment of the TABOR Portion and any Additional TABOR Portion will constitute an RTD Appropriation Obligation.

**TABOR Portion as Subordinate Lien Sales Tax Obligation.** The term "TABOR Portion" derives from an amendment to Article X to the State Constitution passed in 1992 and referred to as the TABOR, or Taxpayer's Bill of Rights Amendment. TABOR requires voter approval for tax increases, debt, multiple-fiscal year financial obligations and increases in government spending that exceed inflation plus local growth, which, for a governmental

entity such as the District is based on certain changes in the value of taxable property. The authority for the District to make the payment of the TABOR Portion and any Additional TABOR Portion in accordance with the Concession Agreement was authorized by a November 2, 2004 ballot referendum (the "2004 Election") pursuant to which voters in the District approved an increase in the District's sales tax rate from 0.6% (the "0.6% Sales Tax") to 1.0%, effective January 1, 2005, providing an additional 0.4% sales tax (the "0.4% Sales Tax"). The 2004 Election also allows the District to issue debt obligations in the aggregate principal amount of \$3.477 billion (with a maximum total repayment cost of \$7.129 billion, and a maximum annual repayment cost of \$309.738 million and a maximum Net Effective Interest Rate of 7%) to fund the FasTracks Plan. For additional information, see "THE PROJECT— Overview of Denver FasTracks Plan" and APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT—RTD SALES TAX."

Payment of the TABOR Portion and any Additional TABOR Portion constitutes a Subordinate Lien Sales Tax Revenue Bond under the FasTracks Indentures and is a valid, binding, special, limited obligation of the District, payable from and secured by a subordinate lien on the RTD Sales Tax Revenues.

Pursuant to the Concession Agreement, the District has pledged to the payment of the TABOR Portion and any Additional TABOR Portion: (a) all 0.4% Sales Tax Revenues available after payment of the FasTracks Bonds and any additional Senior RTD Debt; and (b) all 0.6% Sales Tax Revenues available after payment of the 0.6% Senior Debt and after any required payment of the FasTracks Bonds and any additional Senior RTD Debt.

Pursuant to the FasTracks Indentures, payment of the TABOR Portion and any Additional TABOR Portion will continue to be entitled to the lien on RTD Sales Tax Revenues described above even if no Senior RTD Debt remains outstanding.

**Outstanding Indebtedness Secured by RTD Sales Tax Revenues.** Since the 2004 FasTracks election in order to finance or refinance the District's FasTracks Plan, the District has issued pursuant to respective bond indentures (collectively, the "FasTracks Indentures") several series of sales tax revenue bonds and parity obligations in an aggregate amount of \$2.785 billion, of which \$2.018 billion is outstanding (the "FasTracks Bonds") as of December 31, 2019. The outstanding FasTracks Bonds, and any FasTracks Bonds subsequently issued by the District on a parity with the outstanding FasTracks Bonds (the "Additional Parity FasTracks Bonds") are secured by a first lien on the 0.4% Sales Tax Revenues and a subordinate lien on the 0.6% Sales Tax Revenues. The TABOR Portion and any Additional TABOR Portion is subordinate in payment to the 0.6% Senior Bonds and the FasTracks Bonds. See "DEBT STRUCTURE OF DISTRICT" in APPENDIX A.

Pursuant to a bond resolution, as amended and supplemented from time to time (the "0.6% Bond Resolution"), the District has previously issued several series of Sales Tax Revenue Bonds, of which \$55,790,000 are currently outstanding (the "0.6% Senior Bonds"), which are secured by a first lien on the 0.6% Sales Tax Revenues. The 0.6% Senior Debt is <u>not</u> secured by the 0.4% Sales Tax Revenues. The District is no longer permitted to issue 0.6% Senior Bonds other than to refinance outstanding 0,6% Senior Bonds to realize a reduction in interest expense in each year. For information about the impact of and the District's COVID-19 response, please see APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT—GENERAL INFORMATION— Certain Considerations Relating to COVID-19."

Additional Sales Tax Indebtedness Permitted Under the Concession Agreement. The District has covenanted under the FasTracks Indentures that no additional debt obligations will be issued with a pledge of and lien on the 0.6% Sales Tax Revenues or the 0.4% Sales Tax Revenues that is senior to the lien of the FasTracks Bonds, exclusive of: (a) obligations issued to refund 0.6% Senior Debt (so long as after issuance, the debt service payable on all 0.6% Senior Debt in each bond year does not exceed the debt service currently payable in each bond year on such 0.6% Senior Debt) and (b) any "Senior Financial Products Agreements" and "Senior Credit Facility Obligations" (both as defined in the FasTracks Indentures) in connection with the 0.6% Senior Debt. Senior Financial Products Agreement means any interest rate swap, cap, collar, floor, other hedging agreement, arrangement or security entered respect to 0.6% Senior Debt pursuant to which periodic payments and/or the termination payments are payable from a lien on the 0.6% Sales Tax Revenues that is senior to the lien of the FasTracks Bonds. Senior Credit Facility Obligation means any letter or line of credit, bond insurance, surety bond or guarantee or similar instrument which specifically provides security and/or liquidity in respect of 0.6% Senior Debt and that is payable from RTD Sales Tax Revenues. The District has covenanted under the Concession

Agreement that any such termination payments will have a lien on 0.6% Sales Tax Revenues that is subordinate to the lien of the TABOR Portion and the Additional TABOR Portion.

The Concession Agreement permits the District to issue additional indebtedness with a lien on RTD Sales Tax Revenues senior to that of the TABOR Portion and any Additional TABOR Portion ("Senior RTD Debt") only if the following requirement can be satisfied: that during 12 consecutive calendar months of the 18 calendar months prior to the issuance of the proposed Senior RTD Debt, RTD Sales Tax Revenues (including any estimated revenues which would have been received during said 12-month period from additional Sales Taxes imposed during this 18month period) and certain investment proceeds will be at least equal to 150% of the combined Maximum Annual Debt Service Requirements (as defined in the Concession Agreement) for all currently outstanding Senior RTD Debt, the Senior RTD Debt which is proposed to be issued, and the TABOR Portion and any Additional TABOR Portion. The Concession Agreement sets forth the conditions and assumptions to be applied with respect to variable rate indebtedness, Financial Products Agreements and Commercial Paper Notes for purposes of computing the debt service coverage ratio requirement described above. See APPENDIX C-----SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT." Notwithstanding the foregoing, the District may enter into such Senior Credit Facility Obligations and Senior Financial Products Agreements relating to the Senior RTD Debt as the District determines to be in its best interest. However, pursuant to the Concession Agreement any termination payments with respect to Senior Financial Products Agreements must have a lien on the RTD Sales Tax Revenues that is subordinate to the lien of the TABOR Portion and the Additional TABOR Portion.

The Concession Agreement also provides that the District may issue additional Senior RTD Debt for the purpose of refunding outstanding Senior RTD Debt, without satisfying the conditions set forth above, provided that the debt service payable on all Senior RTD Debt outstanding after the issuance of such additional refunding Senior RTD Debt in each Bond Year does not exceed the debt service payable on all Senior RTD Debt outstanding prior to the issuance of such additional Senior RTD Debt in each Bond Year.

The District may not issue any indebtedness with a lien on the RTD Sales Tax Revenues which is on a parity with the lien of the TABOR Portion and any Additional TABOR Portion. However, the District may issue at any time such Subordinate Lien Bonds and enter into such Subordinate Financial Products Agreements and Subordinate Credit Facility Obligations, all of which have a lien on the RTD Sales Tax Revenues which is subordinate to the lien of the TABOR Portion and any Additional TABOR Portion, as the District determines to be in its best interest.

**Payment of the TABOR Portion.** The District has assigned its rights to receive payment of the RTD Sales Tax Revenues to The Bank of New York Mellon Trust Company, N.A., (the "Senior RTD Debt Trustee") as trustee for the benefit, respectively, of the owners of both the 0.6% Senior Debt and the FasTracks Bonds. The funds, accounts and mechanics required for paying debt service on the 0.6% Senior Debt and the FasTracks Bonds are set forth in the 0.6% Bond Resolution and the FasTracks Indentures. Each month, after making in full all deposits or payments required with respect to the 0.6% Senior Debt, the Senior RTD Debt Trustee is required to remit any remaining 0.6% Sales Tax Revenues to fund any requirements secured, but not otherwise funded, by the 0.4% Sales Tax Revenues. All 0.4% Sales Tax Revenues will be applied: first, to the FasTracks Bonds and any Additional Parity FasTracks Bonds; second, to the TABOR Portion and any Additional TABOR Portion; and third, to any indebtedness debt secured by the RTD Sales Tax Revenues with a lien that is subordinate to the TABOR Portion and any Additional TABOR Portion.

Pursuant to the FasTracks Indentures, the District may provide written instructions to the Senior RTD Debt Trustee regarding the use of the RTD Sales Tax Revenues remaining on deposit after the required payments under the FasTracks Indentures as described above have been satisfied. Accordingly, pursuant to the Concession Agreement, the District has provided written instructions to the Senior RTD Debt Trustee (the "TABOR Payment Instructions"), setting forth the priority and mechanics for payments of the TABOR Portion and any Additional TABOR Portion from the RTD Sales Tax Revenues, which instructions may not be materially amended by the District without prior written consent from the Company.

Pursuant to the TABOR Payment Instructions, the Senior RTD Debt Trustee also serves as the District's disbursement agent (the "Disbursement Agent") with respect to the required payments of the TABOR Portion and any Additional TABOR Portion under the Concession Agreement. A segregated account held by the Senior RTD

Debt Trustee and designated as the "District Eagle-P3 Payment Account" (the "Eagle-P3 Account") has been created pursuant to the TABOR Payment Instructions. Pursuant to the terms of the Concession Agreement and the TABOR Payment Instructions, commencing with the Revenue Service Commencement Date with respect to the East Corridor Service, the Senior RTD Debt Trustee is required to credit to the Eagle-P3 Account, from available moneys on deposit in the Sales Tax Increase (0.4%) Fund and, to the extent necessary, the Sales Tax (0.6%) Fund (collectively, the "Sales Tax Funds"), after all credits or payments under the FasTracks Indentures have been made, and after all payments or transfers required in connection with the issuance or incurrence of additional Senior RTD Debt have been made, an amount equal to the amount of the TABOR Portion and any Additional TABOR Portion due on the fifth business day of each month. Such amounts will be credited to the Eagle-P3 Account prior to the Senior RTD Debt Trustee making payments from remaining amounts on deposit in the Sales Tax Funds for the payment of any other debt obligations of the District. See the chart titled "Application of the RTD Sales Tax Revenues" below.

In the event that in any particular month there are not sufficient remaining revenues on deposit in the Sales Tax Funds to make the required deposit to the Eagle-P3 Account, then the Disbursement Agent will make up any shortfall in the following month or months to the extent of revenues available in the Sales Tax Funds.

On or prior to each payment date, the Disbursement Agent, without further direction from the District or the Company, will remit to the Company the total amount of the TABOR Portion due on that date to the extent amounts on deposit in the Eagle-P3 Account are sufficient. Such remittance from the Disbursement Agent will be made solely from amounts on deposit in the Eagle-P3 Account (or as otherwise directed in writing by the District to the Disbursement Agent). In the event that three Business Days prior to any payment date, there are not sufficient moneys on deposit in the Eagle-P3 Account to pay the TABOR Portion and any Additional TABOR Portion on the payment date, the Disbursement Agent will immediately notify the District in writing of the insufficiency.

Moneys on deposit in the Eagle-P3 Account will be used solely to pay the TABOR Portion. The Eagle-P3 Account will not be subject to the lien of the FasTracks Indentures and moneys on deposit in the Eagle-P3 Account cannot be used to pay any Senior RTD Debt or any other District subordinate indebtedness.

Pursuant to the Concession Agreement, the District may not materially amend the TABOR Payment Instructions without the consent of the Company.

Pursuant to the Security Agreement, the Company has pledged and granted all of its rights, title and interest in, to and under the Concession Agreement, including the right to receive Service Payments, to the Trustee for the benefit of the Owners of the Bonds. Payments to the Company of the TABOR Portion and any Additional TABOR Portion will be made directly to the Account Bank for application pursuant to the Lockbox Account Agreement. See "ACCOUNTS AND FLOW OF FUNDS."

**Potential Acceleration of the 0.6% Senior Bonds; Trustee Also Serving as the District Senior Debt Trustee.** In the event the 0.6% Sales Tax Revenues are insufficient to pay principal of or interest on the 0.6% Senior Bonds, or upon the happening and continuance of any other event of default under the 0.6% Bond Resolution, the Senior RTD Debt Trustee, or the holders of not less than 25% in principal amount of the 0.6% Senior Bonds then outstanding under the 0.6% Bond Resolution, may declare the principal and accrued interest on such Bonds immediately due and payable. If such declaration occurs, until all principal and interest on the 0.6% Senior Bonds was paid in full, none of the 0.6% Sales Tax Revenues would be available as a source of Sales Tax Revenue to pay any of the TABOR Portion.

As described above, the District has pledged to the payment of the TABOR Portion: (a) all 0.4% Sales Tax Revenues available after payment of the FasTracks Bonds and any additional senior debt issued pursuant to the FasTracks Indentures; and (b) all 0.6% Sales Tax Revenues available after payment of the 0.6% Senior Debt and after any required payment of the FasTracks Bonds and any additional senior debt issued pursuant either to the 0.6% Bond Resolution or the FasTracks Indentures. Therefore, a decision by the Senior RTD Debt Trustee to declare the principal and accrued interest on the 0.6% Senior Bonds immediately due and payable may, under certain circumstances, be viewed as an action that benefits the owners of 0.6% Senior Bonds to the detriment of the Owners of the Series 2020 Bonds. The Bank of New York Mellon Trust Company, N.A., is serving as both the Trustee for the Series 2020 Bonds and the Senior RTD Debt Trustee for the 0.6% Bonds and the FasTracks Bonds. As a result, there may be potential for conflict associated with any decision to declare the principal and accrued interest on the 0.6% Senior Bonds immediately due and payable in these circumstances.

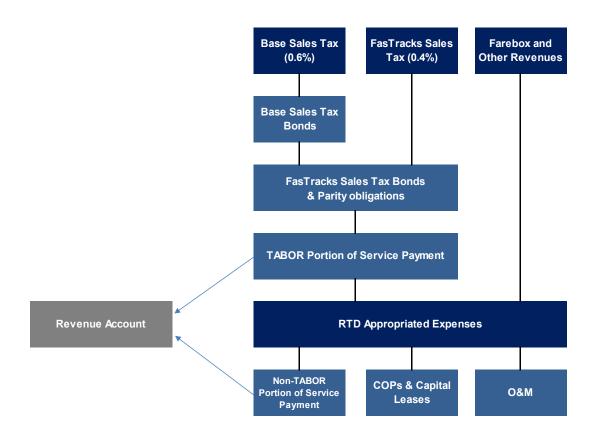
### **RTD** Appropriation Obligations

All Service Payments, other than the TABOR Portion and any Additional TABOR Portion, required to be paid by the District under the Concession Agreement constitute RTD Appropriation Obligations. Moreover, the Concession Agreement provides that any amount of the TABOR Portion and any Additional TABOR Portion that is not paid from Sales Taxes and remains unpaid under the Concession Agreement, shall also constitute an RTD Appropriation Obligation (without double-counting as to amounts payable by District under the Concession Agreement). The RTD Appropriation Obligations are subject to the Board of the District expressly approving annual appropriations of moneys to satisfy such Obligations. No RTD Appropriation Obligation which requires funding in any Fiscal Year is legally enforceable against the District without an appropriation for the relevant amount of funding in such Fiscal Year.

The District has agreed in the Concession Agreement as follows with respect to the RTD Appropriation Obligations: (a) to provide a copy of the budget for the following Fiscal Year to the Company no later than five Business Days after such submission; (b) to provide a notice to the Company of all budget allocations and appropriations made by the District in respect of any and all RTD Appropriation Obligations for such Fiscal Year; (c) that the RTD Appropriation Obligations which require funding and are payable or expected to be payable during the following Fiscal Year will be included in the District's annual budget for consideration for appropriation; (d) that any and all such RTD Appropriation Obligations will be given priority (to the extent permitted by Law and subject to the District will use best efforts to ensure the availability of funds to meet such RTD Appropriation Obligations; and (f) that the District will use best efforts to fund any RTD Appropriation Obligations arising upon termination of the Concession Agreement. All information to be provided to the Company as described in this paragraph will also be provided to the Account Bank pursuant to the Lockbox Account Agreement. See "ACCOUNTS AND FLOW OF FUNDS."

The following chart reflects the application of RTD Sales Tax Revenues and other available funds of the District to pay both the TABOR Portion and the RTD Appropriation Obligation components of the Service Payments.

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# **RTD Sales Tax Revenues Conceptual Flow of Funds**

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### **Comparison of RTD Sales Tax Revenues to TABOR Portion**

As provided in APPENDIX A—"REGIONAL TRANSPORTATION DISTRICT—RTD SALES TAX," RTD Sales Tax Revenues for 2019 were \$659.4 million. Based on the scheduled debt service payable on currently outstanding 0.6% Senior Bonds, 0.4% FasTracks Bonds and parity obligations and the schedule of the annual TABOR Portion payable to the Company incorporated in the Concession Agreement, current RTD Sales Tax Revenues can be compared to the annual Debt Service Requirements for currently outstanding 0.6% Senior Bonds, currently outstanding 0.4% FasTracks Bonds and the TABOR Portion to be paid in each year during the term of the Concession Agreement. The Maximum Annual Debt Service Requirement is approximately \$228.4 million, scheduled to be paid in 2033 for the then-outstanding 0.4% FasTracks Bonds and parity obligations and the TABOR Portion. (Final maturity of the 0.6% Senior Bonds is currently scheduled to occur in 2024.) The District is permitted under the Concession Agreement to issue additional indebtedness with a lien on RTD Sales Tax Revenues senior to that of the TABOR Portion, subject, however, to compliance with the "additional bonds test" described herein under "—TABOR Portion—Additional Sales Tax Indebtedness Permitted Under the Concession Agreement."

### **Payment of Termination Amounts**

*Termination of Concession Agreement.* The Concession Agreement may be terminated as the result of any one of the termination events described below. There is no termination for convenience. Pursuant to the Concession Agreement, the Company will be paid the Applicable Termination Amount upon the occurrence of any of these termination events, but the amount of the Applicable Termination Amount paid to the Company will vary depending upon the specific termination event. Applicable Termination Amounts will be calculated as described below. For purpose of any calculation of any Applicable Termination Amount, "Lenders' Liabilities" includes all unpaid principal of the Bonds and all interest accrued on the Bonds until the Termination Date, as well as other amounts owed by the Company to lenders and financial institutions and certain other payments, including any prepayment costs, make-whole amounts and breakage costs. For additional information regarding termination events under the Concession Agreement and the calculation of Applicable Termination Amounts, see "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" and APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

*Concessionaire Termination Event during the Operating Period.* If the Concession Agreement is terminated due to a Concessionaire Termination Event during the Operating Period, the Applicable Termination Amount to be paid to the Company will be the greater of: (a) an amount not to exceed the aggregate amount of Lenders' Liabilities that is equal to: (i) all Project Implementation Costs incurred by the Company until the Termination of Project Implementation Costs; and (b) 80% of Lenders' Liabilities; provided that the following amounts will be deducted from the amounts calculated pursuant to both (a) and (b) above: (X) Projected Rectification Costs as determined by an independent third party expert appointed jointly by the Parties; and (Y) the reasonable and verifiable costs incurred by the District (A) with respect to the expert determination referenced above, and (B) in replacing the Company with a suitable substitute contractor (including the costs incurred in carrying out any re-letting process).

**RTD Termination Event.** If the Concession Agreement is terminated due to an RTD Termination Event, the amount payable by the District as Termination Compensation shall equal the aggregate, calculated at the Termination Date (and re-calculated on each anniversary of the Termination Date until payment of the Applicable Termination Amount in full, in accordance with the provisions of the Concession Agreement) of the sum of the following: (a) the aggregate amount of Lenders' Liabilities; (b) Equity Market Value (less costs expended for an independent third party expert appraisal of such Equity Market Value); (c) any subcontractor breakage costs; and (d) reasonable and verifiable costs of enforcement, protection or preservation of security incurred by the Trustee or the Owners of the Bonds from the Termination Date to the date of payment.

*Extensive Force Majeure Event.* If the Concession Agreement is terminated due to an Extensive Force Majeure Event, the Applicable Termination Amount to be paid to the Company will equal the aggregate, calculated at the Termination Date (and re-calculated on each anniversary of the Termination Date until payment of the Applicable Termination Amount in full, in accordance with the provisions of the Concession Agreement) of the sum

of the following: (a) the aggregate amount of Lenders' Liabilities; (b) all amounts paid by the Shareholders of the Company (or Affiliates) for Project Implementation Costs in the form of capital contributions to the Company or as Subordinated Debt up until the Termination Date), less any amounts received by the Shareholders (or Affiliates) as Distributions (or any such amounts that were permitted under Designated Credit Agreements to be paid to Shareholders but were not so paid as at the Termination Date); (c) any subcontractor breakage costs; and (d) reasonable and verifiable costs and expenses of enforcement, protection or preservation of security properly incurred by the Trustee or the Owners of the Bonds from the Termination Date to the date of payment by the District.

# **Relief Events**

**Operating Period.** During the Operating Period, the Company shall not suffer any impact to the Availability Ratio or accrue any Performance Deductions as a result of any Relief Event where the events giving rise to the Relief Event would, absent a Relief Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue. The Company shall be entitled to claim, and be paid by the District, the Incurred Costs actually incurred by it as a result of the delay and/or disruption to the Company's performance of the Concession Agreement, and any additional work it is required to carry out as a result of the applicable Relief Events. There is a separate relief mechanism for relief in connection with a Change or Work Order.

Adjustments to Service Payments. Following the occurrence of any Relief Event that results in the Company incurring additional capital expenditure or funding, an adjustment to the Service Payment for such Commuter Rail Service will be made in order to restore the respective economic position of the Parties as set out in the Financial Model immediately prior to such occurrence or payment, as the case may be, and, in the case of a Change, to ensure that the Company suffers no reduction in revenue or net income as a result of carrying out such Change. Any Incurred Costs payable by the District shall be paid by the District by direct lump sum payment or by an adjustment to the Service Payments as soon as possible following the occurrence of the Relief Event; provided that the amount and timing of such adjustment shall be determined by reference to the Financial Model so as to maintain required debt service coverage ratios.

### ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the Series 2020 Bonds are expected to be applied as follows:

Estimated Sources of Funds:

Par Amount of the Series 2020A Bonds Par Amount of the Series 2020B Bonds Original Issue Premium Series 2020A Bonds Series 2010 Interest Sub-Account Series 2010 Principal Sub-Account Debt Service Reserve Account (Series 2010)	\$304,820,000.00 6,965,000.00 66,471,266.40 7,613,000.41 3,433,600.62 16,559,393.31
Total Sources	\$405,862,260.74
Estimated Uses of Funds:	
Redemption of Series 2010 Bonds Costs of Issuance Underwriter's Discount Debt Service Reserve Account (Series 2020)	\$393,210,709.06 3,740,380.23 1,131,795.20 7,779,376.25
Total Uses	\$405,862,260.74

# THE SERIES 2020 BONDS

#### General

The Series 2020 Bonds are being issued in the aggregate principal amount and will mature, subject to prior redemption, on the dates shown on the inside cover page of this Official Statement and will be subject to redemption prior to maturity as described below. The Series 2020 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. The Series 2020 Bonds will be issued in book-entry form pursuant to the book-entry-only system described herein. Beneficial Owners of the Series 2020 Bonds will not receive physical delivery of any Bond certificates.

The Series 2020 Bonds will be dated their date of initial delivery and will bear interest from that date at the per annum rate set forth on the inside cover page of this Official Statement.

Interest on the Series 2020 Bonds is payable semi-annually on January 15 and July 15 of each year, commencing on July 15, 2021, until maturity or prior redemption. Interest on the Series 2020 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

### **Special and Limited Obligations**

The Series 2020 Bonds are special limited obligations of the Issuer, payable solely from payments received from the Company pursuant to the Loan Agreement. Except for revenues provided pursuant to the Loan Agreement as described in the following sentence, the Owners of the Series 2020 Bonds may not look to any revenues or assets of the Issuer for repayment of the Series 2020 Bonds. The only sources of repayment of the Series 2020 Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement and the Security Interests that are part of the Trust Estate. The Series 2020 Bonds will not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State.

### Payment of the Series 2020 Bonds

The principal of and interest on the Series 2020 Bonds will be payable only to the Owner thereof appearing on the registration books, and the Indenture provides that, to the extent permitted by law, neither the Trustee, nor any agent thereof, will be affected by notice to the contrary.

Pursuant to the Indenture, the principal and Redemption Price of any Series 2020 Bond will be paid to the Owner thereof as shown on the registration records of the Trustee upon maturity or prior redemption thereof in accordance with the terms of the Indenture and upon presentation and surrender of the Series 2020 Bonds at the designated payment office of the Trustee in New York, New York. Interest on the Series 2020 Bonds is payable to the Owner whose name appears in the registration books at the close of business on the Record Date and will be paid (a) by check or draft sent on or prior to the appropriate date of payment by the Trustee to the address of the Owner appearing in the registration books on the Record Date, (b) at the option of any registered Owner of at least one million dollars (\$1,000,000) in principal amount of the Bonds, by wire transfer in immediately available funds on each interest payment date to such Owner thereof upon written notice from such Owner to the Trustee, at such address as the Trustee may from time to time notify such Owner, containing the wire transfer address (which shall be in the continental United States) to which such Owner wishes to have such wire directed, if such written notice is received not less than twenty (20) days prior to the related interest payment date (such notice may refer to multiple interest payments) or (c) by such other method as mutually agreed in writing between the Owner of the Series 2020 Bond and the Trustee. The "Record Date" for the Series 2020 Bonds is the close of business on the last day of the month immediately preceding the month of each Interest Payment Date. If any such Record Date is not a Business Day, then the Record Date is the Business Day next preceding such date.

The Indenture provides that any interest not timely paid will cease to be payable to the Owner thereof at the close of business on the Record Date and will be payable to the person who is the Owner thereof at the close of business on a new Record Date for the payment of such defaulted interest (a "Special Record Date"). Such Special Record Date will be fixed by the Trustee whenever moneys become available for payment of the defaulted interest,

and notice of the Special Record Date will be given by the Trustee to the Owners of the Series 2020 Bonds, not less than 10 days prior to the Special Record Date, by certified or first-class mail to each such Owner as shown on the Trustee's registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

While the Series 2020 Bonds are held under the book-entry system, the principal of, interest on and Redemption Price of the Series 2020 Bonds will be paid by wire transfer to DTC, as securities depository, or its nominee.

# Redemption

The Series 2020 Bonds are subject to redemption prior to their stated maturity, in accordance with the terms and provisions of the Indenture, as follows:

**Optional Redemption.** Series 2020A Bonds (other than the Series 2020A Bonds maturing July 15, 2033, July 15, 2039 and July 15, 2040, which Series 2020A Bonds are not subject to optional redemption prior to their respective maturity dates) will be subject to optional redemption on January 15, 2031 and on any Business Day thereafter, by the Issuer, at the direction of the Company, in whole or in part, and if in part, by lot within such maturities as selected by the Company, with funds provided by the Company at a redemption price of par plus accrued and unpaid interest on the Series 2020A Bonds being redeemed to, but, not including the redemption date (provided that any redemption in part of the Series 2020A Bonds may only be made in Authorized Denominations).

The Issuer, at the direction of the Company, may optionally redeem the Series 2020B Bonds in whole or in part, and if in part, in accordance with the following paragraph (provided that a portion of a Series 2020B Bond may be redeemed only in Authorized Denominations), on any date with funds provided by the Company, at a redemption price equal to the greater of: (i) the issue price set forth on the inside cover page of this Official Statement (but not less than 100%) of the principal amount of the Series 2020B Bonds of such maturity to be redeemed; and (ii) the sum of the present values of the applicable remaining scheduled payments of principal and interest to maturity on the Series 2020B Bonds of such maturity to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Series 2020B Bonds are to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 40 basis points, plus in each case, accrued and unpaid interest on the Series 2020B Bonds may be optionally redeemed only if the redemption price calculated pursuant to the previous sentence is less than or equal to the sum of one hundred-seven percent (107)% of the principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.

If less than all of the Series 2020 Bonds are to be redeemed, the particular maturities of the Series 2020B Bonds to be redeemed by the Issuer, at the direction of the Company, will be determined by the Company in its sole discretion. If the Series 2020B Bonds are registered in book-entry only form and so long as DTC or a successor securities depository is the sole registered owner of the Series 2020B Bonds, if less than all of a maturity and interest rate of the Series 2020B Bonds are to be redeemed prior to maturity, the particular Series 2020B Bonds or portions thereof to be redeemed shall be selected on a "Pro Rata Pass-Through Distribution of Principal" basis in accordance with DTC procedures; provided that, so long as the Series 2020B Bonds are held in book-entry form, the selection for redemption of such Series 2020B Bonds shall be made in accordance with the operational arrangements of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis, the Series 2020B Bonds will be selected for redemption in accordance with DTC procedures by lot within a maturity.

The Issuer and the Company intend that redemption allocations made by DTC of the Series 2020B Bonds be made on a "Pro Rata Pass-Through Distribution of Principal" basis, but neither the Issuer, the Company nor the Underwriters can provide any assurance that DTC, DTC's direct and indirect participants, or any other intermediary will allocate the redemption of the Series 2020B Bonds on that basis.

*Mandatory Sinking Fund Redemption.* The Series 2020A Bonds maturing on July 15, 2034, July 15, 2035, July 15, 2036, July 15, 2037, July 15, 2038, July 15, 2039 and July 15, 2040 (collectively, the "Series 2020A Term Bonds") will be subject to mandatory sinking fund redemption prior to maturity in the aggregate principal

amounts and on the dates set forth in the following amortization tables at a redemption price of par plus accrued interest to, but not including, the date fixed for redemption. Such Series 2020A Term Bonds will be redeemed by lot in accordance with the arrangements with DTC.

### Series 2020A Bonds Maturing July 15, 2034

Mandatory Redemption Date	Principal Amount
January 15, 2034	\$17,650,000
July 15, 2034*	14,655,000

\*Final maturity

#### Series 2020A Bonds Maturing July 15, 2035

Mandatory Redemption Date
January 15, 2035
July 15, 2035*

Principal Amount \$18,300,000 15,315,000

\*Final maturity

#### Series 2020A Bonds Maturing July 15, 2036

Mandatory Redemption Date	Principal Amount
January 15, 2036	\$15,555,000
July 15, 2036*	2,910,000

\*Final maturity

#### Series 2020A Bonds Maturing July 15, 2037

Mandatory Redemption Date January 15, 2037 July 15, 2037\* Principal Amount \$13,640,000 3,630,000

\*Final maturity

#### Series 2020A Bonds Maturing July 15, 2038

Mandatory Redemption Date January 15, 2038 July 15, 2038\* Principal Amount \$4,220,000 4,550,000

\*Final maturity

#### Series 2020A Bonds Maturing July 15, 2039

Mandatory Redemption Date January 15, 2039 July 15, 2039\*

Principal Amount
\$9,025,000
10,975,000

\*Final maturity

### Series 2020A Bonds Maturing July 15, 2040

Mandatory Redemption Date January 15, 2040 July 15, 2040\* Principal Amount \$6,455,000 5,940,000

\*Final maturity

The Trustee shall credit against the mandatory sinking fund requirement for the Series 2020 Bonds (and corresponding mandatory redemption obligation), as set forth above in the order determined by the Company, any Series 2020 Bonds of the applicable maturity delivered to the Trustee for cancellation or purchased for cancellation by the Trustee and canceled by the Trustee and not theretofore applied as a credit against any redemption obligation under the Indenture.

### **Extraordinary Mandatory Redemption**

Concession Agreement Termination Payments. The Series 2020 Bonds are subject to extraordinary mandatory redemption in the event that the Company receives a lump sum payment of any of the following types of Applicable Termination Amounts under the Concession Agreement (the "Termination Compensation"): RTD Default Amount, Concessionaire Default Amount or FM Termination Amount. Such Termination Compensation will be paid to the Company by the District in the event the District refinances, in whole or in part, its continued obligation under the Concession Agreement to pay the TABOR Portion to the Company after the occurrence of any event that requires the District to pay such Termination Compensation. See "PRINCIPAL PROJECT AGREEMENTS-Concession Agreement-Termination of the Concession Agreement." Such redemption will be in whole or in part and, if in part, (a) in the case of Series 2020A Bonds, by lot within such maturities as selected by the Company and (b) in the case of Series 2020B Bonds, in accordance with the following paragraph (provided that a portion of a Bond may be redeemed only in Authorized Denominations) at a redemption price equal to (a) for the Series 2020A Bonds, the Amortized Redemption Price or Accreted Redemption Price, as applicable, of the Series 2020A Bonds of such maturity to be redeemed and (b) for the Series 2020B Bonds, the greater of: (i) the issue price set forth on the inside cover page of this Official Statement (but not less than 100%) of the principal amount of the Series 2020B Bonds of such maturity to be redeemed; and (ii) the sum of the present values of the applicable remaining scheduled payments of principal and interest to maturity on the Series 2020B Bonds of such maturity to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Series 2020B Bonds are to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 40 basis points, plus in each case, accrued and unpaid interest on the Series 2020B Bonds being redeemed to, but not including, the redemption date. Notwithstanding the redemption price calculated pursuant to the previous sentence for Series 2020A Bonds or for Series 2020B Bonds, the redemption price of such Series 2020 Bonds shall never be in excess of the sum of one hundred-seven percent (107)% of the principal amount of such Series 2020 Bonds to be redeemed plus accrued interest to the redemption date. The redemption shall occur on any date for which the requisite notice of redemption can be given within 120 days after the Termination Compensation is received by the Company. Pursuant to Sections 32-9-137(1) of the Act, in the event of an extraordinary mandatory redemption due to a payment of Termination Compensation, any unamortized premium or make-whole amounts that would otherwise be included in the redemption price of the applicable Bonds in excess of the statutory limit on the payment of premiums (seven percent (7%) of the principal amount of such Bonds to be redeemed) will not be included in the redemption price of such Bonds.

If less than all of the Series 2020 Bonds are to be redeemed, the particular maturities of the Series 2020B Bonds to be redeemed by the Issuer, at the direction of the Company, will be determined by the Company in its sole discretion. If the Series 2020B Bonds are registered in book-entry only form and so long as DTC or a successor securities depository is the sole registered owner of the Series 2020B Bonds, if less than all of a maturity and interest rate of the Series 2020B Bonds are to be redeemed prior to maturity, the particular Series 2020B Bonds or portions thereof to be redeemed shall be selected on a "Pro Rata Pass-Through Distribution of Principal" basis in accordance with DTC procedures; *provided* that, so long as the Series 2020B Bonds are held in book-entry form, the selection for redemption of such Series 2020B Bonds shall be made in accordance with the operational arrangements of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis of DTC then in effect. If the Trustee does not provide the necessary information and identify the redemption as on a "Pro Rata Pass-Through Distribution of Principal" basis, the Series 2020B Bonds will be selected for redemption in accordance with DTC procedures by lot within a maturity.

The Issuer and the Company intend that redemption allocations made by DTC of the Series 2020B Bonds be made on a "Pro Rata Pass-Through Distribution of Principal" basis, but neither the Issuer, the Company nor the Underwriters can provide any assurance that DTC, DTC's direct and indirect participants, or any other intermediary will allocate the redemption of the Series 2020B Bonds on that basis.

*Notice of Redemption*. The Indenture provides that notice of an optional redemption, mandatory sinking fund redemption or extraordinary redemption, identifying the Series 2020 Bonds or portions thereof to be redeemed and specifying the terms of such redemption, shall be given by the Trustee by mailing a copy of the redemption notice by United States first-class mail, at least 30 days and not more than 60 days prior to the date fixed for redemption, to the Owner of each Series 2020 Bond to be redeemed at the address as it last appears on the registration records of the Trustee; *provided*, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings of any Series 2020 Bonds as to which no such failure has occurred. The Trustee shall give such notice for redemption and payment upon receipt by the Trustee at least 30 days prior to the redemption date of a written request of the Company; *provided* that the Trustee is required to give notice of redemption of Series 2020 Term Bonds for mandatory sinking fund redemption without such written request.

Any notice mailed as provided in the Indenture is deemed to have been duly given, whether or not the Owner receives the notice.

The Indenture provides that, if, at the time of mailing of notice of any redemption of Series 2020 Bonds at the option of the Issuer, there shall not have been deposited with the Trustee moneys sufficient to pay the Redemption Price of all the Series 2020 Bonds to be redeemed, such notice shall state that it is conditional upon the deposit with the Trustee of an amount equivalent to the full amount of the moneys for such purpose not later than the opening of business on the redemption date specified in the redemption notice, and such redemption notice shall be of no effect unless such Redemption Moneys are so deposited.

So long as DTC is affecting book-entry transfers of the Series 2020 Bonds, the Trustee shall provide the redemption notices specified herein to DTC. It is expected that DTC shall, in turn, notify its direct participants and that the direct participants, in turn, will notify or cause to be notified the Beneficial Owners of the Series 2020 Bonds. Any failure on the part of DTC or a direct participant, or failure on the part of a nominee of a beneficial owner of a Series 2020 Bond (having been mailed notice from the Trustee, DTC, a direct participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Series 2020 Bond.

Whenever the Series 2020 Bonds are subject to optional redemption at the election of the Company, all or a portion of such Series 2020 Bonds may instead be purchased at the election of the Company at a purchase price equal to the applicable Redemption Price. The Company shall give written notice thereof and of the Series 2020 Bonds and the maturities of the Series 2020 Bonds to be so purchased to the Issuer and the Trustee and, if in part, (a) in the case of Series 2020A Bonds, by lot within such maturities as selected by the Company and (b) in the case of Series 2020B Bonds, in accordance with the selection basis for the Series 2020B Bonds set forth in "THE SERIES 2020 BONDS-Redemption-Optional Redemption." Promptly thereafter, the Trustee shall give notice of the purchase of such Series 2020 Bonds at the times and in the manner provided for the notice of redemption. All such purchases may be subject to conditions to the obligation of the Company to purchase such Series 2020 Bonds and shall be subject to the condition that money for the payment of the purchase price therefor is available on the date set for such purchase. Notice of purchase having been given in the manner required above, then, if sufficient money to pay the purchase price of such Series 2020 Bonds is held by the Trustee, the purchase price of the Series 2020 Bonds or portions thereof so called for purchase shall become due and payable on the date set for purchase. A purchased Series 2020 Bond shall not be considered to be no longer outstanding by virtue of its purchase and each such purchased Series 2020 Bond that is not a book-entry bond shall be registered in the name or at the direction of the Company. With respect to any Series 2020 Bonds purchased by the Company, the Company may not exercise certain rights that are provided to other holders of such Series 2020 Bonds thereunder. Purchases in lieu of an optional redemption shall be permitted subject to receipt of an opinion of Bond Counsel substantially to the effect that such purchases in lieu of optional redemption comply with the provisions of the Indenture and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any outstanding Series 2020A Bonds.

# **Book-Entry-Only System**

The Series 2020 Bonds will be registered in the name of Cede & Co., as nominee for DTC. Purchases of beneficial interests in the Series 2020 Bonds will be made only in book-entry form. Purchasers of beneficial

interests in the Series 2020 Bonds (the "Beneficial Owners") will not receive physical delivery of certificates representing their interest in the Series 2020 Bonds. Interest on the Series 2020 Bonds, together with principal of the Series 2020 Bonds, will be paid by the Trustee directly to DTC, so long as DTC or its nominee is the registered owner of the Series 2020 Bonds. The final disbursement of such payments to Beneficial Owners of the Series 2020 Bonds will be the responsibility of the DTC's Direct and Indirect Participants, all as defined and more fully described herein. See APPENDIX N—"BOOK-ENTRY-ONLY SYSTEM."

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# SECURITY FOR THE BONDS

# Indenture

### General

The Bonds will be issued and secured under the Indenture. For more information relating to the terms of the Indenture, see APPENDIX G—"SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE."

### Trust Estate

The Issuer, in order to secure the payment of the Bonds, has pledged and assigned, or has required to be pledged and assigned, to the Trustee pursuant to the terms of the Indenture and the Loan Agreement subject to the Security Documents, for the benefit of the Owners, all of the following (collectively, the "Trust Estate"):

(a) all right, title and interest of the Issuer (except for Reserved Rights) in and to the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed), the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed), to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under such Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed);

(b) all moneys, Permitted Investments, Acceptable Letters of Credit or Acceptable Surety Policies from time to time held by the Trustee under the Indenture in any fund or account other than (i) the Rebate Fund and (ii) any Defeasance Escrow Account;

(c) any Security Interest created for the benefit of the Trustee on behalf of the Owners of the Bonds under the Security Documents or otherwise, including without limitation the Project Collateral pledged thereunder, and the present and continuing right of the Trustee to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits, and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things that the Trustee is entitled to do under such Security Documents; and

(d) any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specially granted, assigned or pledged as and for additional security for any of the Series 2020 Bonds, any series of Additional Parity Bonds (if issued), the Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement (if executed) in favor of the Trustee, including any of the foregoing granted, assigned or pledged by the Company or any other person on behalf of the Company, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

# Funds and Accounts to be Established under the Indenture

Various funds and accounts were and will be created under the Indenture, including for the payment of principal of and interest on the Bonds when due. Such funds and accounts include the Cost of Issuance Fund, a Debt Service Reserve Account, the Debt Service Fund and the Rebate Fund described below. For a detailed description of the additional accounts created and maintained under the Indenture, see "ACCOUNTS AND FLOW OF FUNDS—Accounts Under the Indenture."

<u>Cost of Issuance Fund</u>. There shall be deposited into the Series 2020 Cost of Issuance Account of the Cost of Issuance Fund an amount from the proceeds of the Series 2020B Bonds sufficient to pay the Costs of Issuance of the Series 2020A Bonds and the Series 2020B Bonds.

Moneys in the Series 2020 Cost of Issuance Account of the Cost of Issuance Fund shall be used solely for the purposes set forth in the Indenture or to reimburse the Company or any affiliate of the Company for the Cost of

Issuance of the Series 2020 Bonds actually paid by or on behalf of the Company and eligible for reimbursement, in any case upon receipt of an executed Funding Requisition, in substantially the form attached to the Indenture. Any funds remaining in the Series 2020 Cost of Issuance Account on the 90th day following the Closing Date will be transferred by the Trustee to the Revenue Account established pursuant to the Lockbox Account Agreement upon the written direction of the Company to the Trustee. Upon such transfer of funds remaining in the Series 2020 Cost of Issuance Account shall be closed.

<u>Debt Service Reserve Account</u>. The Debt Service Reserve Account, which was created under the Original Indenture, will be funded on the Closing Date in an amount at least sufficient to satisfy the Debt Service Reserve Requirement, after the transfer from the Debt Service Reserve Account of amounts in excess of the Debt Service Reserve Requirement in connection with the Series 2010 Refinancing. Any funds will be deposited from the Revenue Account into the Debt Service Reserve Account to fund any shortfall in accordance with <u>seventh</u> of "ACCOUNTS AND FLOW OF FUNDS—Flow of Funds" herein.

Amounts in the Debt Service Reserve Account will be transferred to the Series 2020A Interest Account and the Series 2020B Interest Account of the Debt Service Fund, or any applicable sub-account thereof, solely to pay the interest on the Bonds secured thereby, and to the Series 2020A Principal Account and the Series 2020B Principal Account of the Debt Service Fund, or any applicable sub-account thereof solely to pay principal of the Bonds secured thereby, in the event there are insufficient funds available in such accounts of the Debt Service Fund when such payments are due.

To the extent on any date of determination, amounts on deposit in the Debt Service Reserve Account are in excess of the Debt Service Reserve Requirement, such excess amounts will be transferred by the Trustee to the Revenue Account established pursuant to the Lockbox Account Agreement upon the written direction of the Company to the Trustee.

The Company may, upon notice to the Trustee, from time to time, substitute all or any portion of the cash or Permitted Investments on deposit in the Debt Service Reserve Account with one or more Acceptable Letters of Credit or an Acceptable Surety Policy in favor of the Trustee for purposes of the Debt Service Reserve Requirement; provided, however, that (i) any such substitution will not cause any rating agency then rating any Bonds at the request of the Company to withdraw or lower its rating on such Bonds and (ii) if any proceeds of the tax-exempt Bonds are on deposit in such Debt Service Reserve Account, an opinion of Bond Counsel that such substitution will not adversely affect the tax-exempt status of such Bonds shall be required. Each Acceptable Letter of Credit or Acceptable Surety Policy shall be drawable in an amount equal to the full remaining stated amount under such letter of credit or surety policy in the event that (i) the issuer of such letter of credit fails to satisfy the requirements of an Acceptable LC Bank or the surety provider of such Acceptable Surety Policy fails to have an Acceptable Credit Rating and the Company fails to replace such letter of credit or surety policy within the required period with any (or a combination) of cash, another Acceptable Letter of Credit from an Acceptable LC Bank or another Acceptable Surety Policy from a surety provider with an Acceptable Credit Rating; or (ii) such letter of credit or surety policy will expire within thirty (30) days, will not be renewed in accordance with its terms and the Company has failed to replace it with any (or a combination) of cash, another Acceptable Letter of Credit from an Acceptable LC Bank or another Acceptable Surety Policy from a surety with an Acceptable Credit Rating. At the written request of a Company Representative, the Trustee shall release funds from the Debt Service Reserve Account in the event that the Company has delivered (or has caused to be delivered) to the Trustee an Acceptable Letter of Credit or Acceptable Surety Policy and any amounts so released shall be transferred directly, without further condition (including transfer of such funds to the Revenue Account for application through the flow of funds), as specified by the Company; provided that, following such release, the amount on deposit in the Debt Service Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit and Acceptable Surety Policies) is at least equal to the Debt Service Reserve Requirement; provided, further, that (i) any such substitution will not cause any rating agency then rating any Bonds at the request of the Company to withdraw or lower its rating on such Bonds and (ii) if any proceeds of the Tax-exempt Bonds are on deposit in such Debt Service Reserve Account and will be released in connection with such substitution, an opinion of Bond Counsel that such release and the proposed use of such released proceeds will not adversely affect the exclusion of interest on such Bonds from gross income for federal income tax purposes will be required.

<u>Debt Service Fund</u>. The Indenture creates with the Trustee the Debt Service Fund, with Interest Accounts, Principal Accounts and a Redemption Account. Moneys will be transferred to the Debt Service Fund pursuant to the Indenture and the Lockbox Account Agreement, including any lump sum termination payments received by the Company from the District as set forth in the Lockbox Account Agreement. Moneys on deposit in the Debt Service Fund will be used solely for the payment (within each account) of the principal of and interest on and the Redemption Price of the Bonds; provided, that (a) moneys paid by the Issuer pursuant to the Indenture with respect to redemption of the Bonds will be used to pay the Redemption Price of the Bonds and (b) moneys held in such account of the Debt Service Fund following an acceleration of the Bonds upon an Event of Default will be used as provided in "SECURITY FOR THE BONDS—Indenture—Use of Moneys Received from Exercise of Remedies" below.

To the extent that, on any applicable Debt Service Payment Date, there are insufficient funds on deposit in the Debt Service Fund to make the required payments of principal and interest on the Bonds, then the Trustee shall transfer moneys between the Interest Accounts and Principal Accounts with the following order of priority, first, to the Interest Accounts for each series of Bonds (on a *pro rata* basis) until such accounts are sufficiently funded and second, to the Principal Accounts for each series of Bonds (on a *pro rata* basis) until such accounts are sufficiently funded.

<u>Rebate Fund</u>. The Rebate Fund, which was created under the Original Indenture, is for the sole benefit of the United States of America and will not be subject to the claim of any other Person, including without limitation, the Owners. The Rebate Fund is established for the purpose of complying with section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. There will be deposited to the Rebate Fund all amounts transferred pursuant to the Lockbox Account Agreement. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, will be held in trust and applied solely as provided in the Indenture.

<u>Investment of Moneys</u>. All moneys held as part of any fund or account established under the Indenture will be deposited or invested and reinvested by the Trustee, at the written direction of the Company, in Permitted Investments; *provided*, however, that moneys in the Debt Service Fund will be invested solely in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof; and *provided further*, however, that moneys in any Defeasance Escrow Account may only be invested in Defeasance Securities. Moneys held in an account of the Trustee are subject to certain investment limitations and amounts on deposit in the Lockbox Project Accounts held by the Account Bank may be invested in a broader set of investment options.

<u>Monthly Reports to Account Bank</u>. To facilitate the administration of the funds and accounts under the Indenture and the related transfers between such funds and accounts and the accounts established and created pursuant to the Lockbox Account Agreement, the Trustee provides a monthly report to the Account Bank four Business Days prior to each Transfer Date setting forth, among other things, the balance for each fund and account, including any sub-accounts, established and created pursuant to the Indenture.

### Additional Parity Bonds

Subject to the restrictions set forth below and upon request by the Company, the Issuer may issue additional parity bonds (the "Additional Parity Bonds"), which shall be ratably and equally secured by the Trust Estate, upon execution of a Supplemental Indenture without consent of the Owners of the Bonds. Except to the extent inconsistent with the express terms of the Additional Parity Bonds issued and the related Supplemental Indenture, all of the provisions, terms, covenants and conditions of the Indenture will apply to any Additional Parity Bonds.

The proceeds of any such Additional Parity Bonds will be used (a) in connection with the Project, including to fund the obligations of the Company under Section 38.9 or Section 36.4 of the Concession Agreement or (b) to refinance or refund all or any portion of the Bonds then Outstanding. Such Additional Parity Bonds may be issued solely if prior to the issuance of any such Additional Parity Bonds, the Company delivers to the Trustee the following:

(a) A certificate of the Company dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Potential Event of Default or Event of Default has occurred and is continuing or will result from the issuance of such Additional Parity Bonds;

(b) Executed counterparts of all financing documents related to the Additional Parity Bonds including, without limitation, (i) a certified copy of the executed counterpart of the Additional Parity Bonds Issuer Loan Agreement, under which the Issuer agrees to loan the proceeds of the Additional Parity Bonds to the Company, and (ii) an original executed counterpart of the Supplemental Indenture under which the Additional Parity Bonds have been issued;

(c) A certificate of an Independent Consultant dated as of the date of issuance of such proposed Additional Parity Bonds certifying that the Indebtedness under the Additional Parity Bonds will not result in a Minimum Projected Debt Service Coverage Ratio of less than 1.15:1.00;

(d) Evidence that upon the date of issuance of such Additional Parity Bonds the then current ratings on any Outstanding Bonds issued pursuant to the Indenture will not be lowered below investment grade on the date of such issuance as a result of the issuance of such Additional Parity Bonds; and

(e) A certificate of an Independent Consultant dated as of the date of issuance of such proposed Additional Parity Bonds certifying that in every Fiscal Year, the ratio of the TABOR Portion to the annual debt service payable on all Bonds after the issuance of such Additional Parity Bonds will be at least 1.00:1.00.

Notwithstanding anything in the Indenture to the contrary, in the case of Additional Parity Bonds issued for the purpose of refinancing or refunding any portion of the Bonds then Outstanding, compliance with the above requirements are not required (unless otherwise required by the provisions of any applicable resolution or supplemental indenture authorizing the issuance of such Additional Parity Bonds) so long as the debt service payable on all Bonds Outstanding after the issuance of such Other Permitted Parity Bonds in each Bond Year does not exceed the debt service payable on all Bonds Outstanding prior to the issuance of such Additional Parity Bonds in each Bond Year.

### **Events of Default under the Indenture**

Any of the following shall constitute an "Event of Default" under the Indenture with respect to all of the Outstanding Bonds:

(a) Default in the payment of any portion of the principal of any Outstanding Bond when due and payable;

(b) Default in the payment of any portion of interest on any Outstanding Bond when due and payable;

(c) Failure by the Issuer to cure any noncompliance with any other provision of this Indenture within 60 days after receiving written notice (with a copy to the Company) of such noncompliance from the Trustee with respect to the Bonds;

(d) A Loan Agreement Default shall have occurred and be continuing; or

(e) The occurrence and continuance, with respect to the Issuer, of a Bankruptcy Event (provided that solely for purposes of this clause, all references to the "Company" within the definition of the term "Bankruptcy Event" shall be substituted with the "Issuer").

# Remedies Following and During the Continuance of an Event of Default

Upon the occurrence and during the continuance of an Event of Default under the Indenture, any Owner or the Issuer may deliver to the Trustee a written notice, with a copy to the Issuer and the Company that an Event of Default has occurred and is continuing. The Trustee will not be deemed to have any knowledge of the occurrence of an Event of Default, except with respect to an event of default as described in clause (a) or (b) in subsection "Indenture—Events of Default under the Indenture" above, unless and until it has received such a notice from the relevant party.

At any time during which an Event of Default under the Indenture has occurred and is continuing, commencing on the date of delivery to the Trustee of the notice described above (except with respect to an "event of default" described in (a) or (b) above, which does not require notice), the Owners of not less than 25% of the Outstanding Bonds shall have the right to give the Trustee one or more enforcement directions directing the Trustee to take on behalf of the Owners of the Bonds whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners of the Bonds.

Upon the occurrence and during the continuance of an Event of Default, if so instructed by the Owners of not less than 25% of Outstanding Bonds, the Trustee will declare all Outstanding Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Bonds to be due and payable; provided that the Outstanding Bonds may be accelerated pursuant to the indenture only to the extent the underlying loan under the Loan Agreement has been accelerated.

The Owners of a majority in aggregate principal amount of the Bond Obligations may, by written notice to the Trustee, on behalf of all of the Owners, rescind any acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Issuer has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Notwithstanding anything in the Financing Documents to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Trustee to liability under any applicable environmental laws, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Trustee shall not be required to take any foreclosure action if the approval of a government regulator shall be a condition precedent to taking such action, and such approval cannot be obtained.

### Use of Moneys Received from Exercise of Remedies

After an acceleration of the Bonds pursuant to the Indenture and the Loan Agreement, moneys received by the Trustee under the Indenture and the other Security Documents pursuant to an exercise of remedies will be applied first to pay the reasonable and proper fees and expenses of the Trustee incurred in connection with the exercise of remedies following such Event of Default under the Indenture, and thereafter remaining amounts will be applied as follows:

<u>First</u>, ratably, to the payment of fees, rating agency costs, administrative costs, expenses and indemnification payments due to the Trustee or the Reserved Rights of the Issuer under the Financing Documents and to the payments then due and payable by the Company to the Rebate Fund; <u>Second</u>, ratably, to all accrued and unpaid interest on the Bonds; <u>Third</u>, ratably, to the outstanding principal amount on the Bonds; <u>Fourth</u>, to all accrued and unpaid interest on any Permitted Subordinated Debt; <u>Fifth</u>, to the outstanding principal amount on any Permitted Subordinated Debt; and <u>Sixth</u>, to the Company, upon termination, expiration or payment in full of all commitments, any surplus to be applied at the Company's discretion.

For more detailed information relating to the terms of the Indenture in general, including provisions relating to covenants, defaults and terminations, see APPENDIX G—"SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE."

### Loan Agreement

*Generally.* The Company and the Issuer have entered into the Loan Agreement pursuant to which the proceeds of the Series 2020 Bonds will be loaned to the Company on the date of issuance of the Series 2020 Bonds (the "Loan"), subject to the terms and conditions of the Loan Agreement. The net proceeds received from the sale of the (a) Series 2020A Bonds will be deposited directly into the Redemption Account (or an appropriate sub-account thereof) to pay all or a portion of the principal and redemption price of the outstanding Series 2010 Bonds on the redemption date in accordance with the terms of the Original Indenture and (b) Series 2020B Bonds will be deposited directly to the Series 2020 Cost of Issuance Account related to the Series 2020A Bonds and the Series 2020B Bonds in an amount sufficient to pay, or reimburse the prior payment of, the Costs of Issuance of each series of Series 2020 Bonds and (ii) a portion will be deposited directly into the Redemption Account (or an appropriate sub-account thereof) to pay all or a portion genes of Series 2020 Bonds and (ii) a portion will be deposited directly into the Redemption Account (or an appropriate sub-account thereof) to pay all or a portion of the accrued interest on, and principal and redemption price of, the outstanding Series 2010 Bonds on the redemption date in accordance with the terms of the Original Indenture. In order to secure the repayment of the Series 2020 Bonds, all of the Issuer's right, title and interest in and to the Loan Agreement (except for Reserved Rights) will be assigned to, and are subject to a security interest in favor of, the Trustee pursuant to the Indenture.

**Compliance with the Indenture.** In accordance with any applicable provisions of the Indenture, at the request of the Company, the Issuer will take any action directed by the Company to the extent required under, or permitted by, the provisions of the Indenture or the Loan Agreement. The Company, in turn, will take all action required to be taken by the Company in the Indenture as if the Company were a party to the Indenture.

**Repayment Terms.** The Company will agree to repay the Loan, as follows: on or before any Interest Payment Date for the Series 2020 Bonds or any other date that any payment of interest, principal or Redemption Price on the Series 2020 Bonds is required to be made in respect of the Series 2020 Bonds pursuant to the Indenture (which payments for principal and interest will be in the respective amounts set forth on the debt service schedule attached to the Loan Agreement and as amended from time to time pursuant to the Indenture), until the payment of interest, principal, or Redemption Price on the Series 2020 Bonds have been fully paid or provision for the payment thereof has been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable account of the Debt Service Fund, will enable the Trustee to pay to the Owners of the Series 2020 Bonds the amount due and payable on such date as interest, principal or Redemption Price on the Series 2020 Bonds as provided in the Indenture.

**Obligations of Company Unconditional.** The obligations of the Company to make payments as required above and to observe and perform all covenants under the Loan Agreement will be absolute and unconditional.

**Prepayment Terms.** The Company will have the option to prepay its obligations under the Loan Agreement at the times and in the amounts as necessary to cause the Series 2020 Bonds to be redeemed in accordance with the terms of the Indenture and the Series 2020 Bonds. The Issuer, at the request of the Company, if applicable, will take all steps necessary under the applicable redemption provisions of the Indenture to effect redemption of all or a part of the Series 2020 Bonds. For more information regarding the redemption terms under the Indenture, see "THE SERIES 2020 BONDS—Redemption."

### Covenants of the Company

In the Loan Agreement, the Company will undertake to comply with certain covenants, including, but not limited to the following:

<u>Delivery of Additional TABOR Portion Notice</u>. The Company will deliver to the District and the Trustee an Additional TABOR Portion Notice pursuant to the Concession Agreement prior to the effective date of any amendment to the State Constitution or any legislation that would, in the reasonable determination of either (1) the Company or (2) the Trustee, at the written direction of the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds provided in accordance with the Indenture, adversely affect the District's ability or obligation to pay the Additional TABOR Portion. If such determination in (2) above is made by the Trustee, it must be evidenced by a written notice filed with the Company and the Additional TABOR Portion Notice must be delivered promptly upon the receipt thereof by the Company. <u>Transaction Documents</u>. The Company will (a) perform and observe all of its covenants and its other obligations contained in each Transaction Document to which it is a party and (b) enforce against any counterparty to a Transaction Document each covenant or obligation of such party in accordance with its terms, except, in the case of clauses (a) and (b) above, to the extent that the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect. The Company will not enter into any material contracts or agreements (other than the Transaction Documents or documents incidental or ancillary thereto) that are not related to the Project or incident or ancillary thereto.

Limitation on Fundamental Changes; Sale of Assets, Etc. The Company will not (a) merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, profit-sharing or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Company; or (b) sell, assign or dispose of or direct the Trustee or the Account Bank, as applicable, to sell, assign or dispose of, any material assets of the Project in excess of \$5,000,000 per year except: (i) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Concession Agreement and the other Material Project Contracts, (ii) sales or other dispositions of surplus property not or defective equipment in the ordinary course of business, (iii) sales or other dispositions of surplus property not required for the operation of the Project in the ordinary course of business, (iv) sales, transfers or other dispositions of Account Agreement Permitted Investments and (v) sales that would constitute Permitted Indebtedness.

<u>Material Project Contracts</u>. The Company will not amend or waive in any material respect or terminate any Material Project Contract, including the Trustee's Instructions delivered by the District pursuant to the Concession Agreement (Attachment 25), or enter into any other material agreement without the prior written consent of the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds provided in accordance with the Indenture; *provided* that (a) the Company and the O&M Contractor may enter into change orders and other amendments under the O&M Contract required for compliance with the Concession Agreement, including in connection with an RTD Proposed Change, (b) the Company and the Design Build Contractor may enter into change orders and amendments under the Design Build Contract and the Rolling Stock Supply Contract required for compliance with the Concession Agreement, including in connection with an RTD Proposed Change and (c) in the event that clause (a) or (b) do not apply, the Company may amend, waive or terminate any Material Project Contract if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect.

Notwithstanding the foregoing, if such Material Project Contract being terminated is the Design Build Contract, the Design Build Guaranty, the O&M Contract or the O&M Guaranty, no further consent of the Trustee or the Owners of the Series 2020 Bonds shall be required for such termination if (i) such Material Project Contract is contemporaneously replaced by a replacement agreement between the Company and an Acceptable Replacement Party and (ii) such replacement agreement obligates the Acceptable Replacement Party to fulfill all of the remaining obligations of the party it is replacing (on economic terms no less favorable to the Company taken as a whole); *provided*, that if such Material Project Contract or counterparty to such Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Company will contemporaneously cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or that is otherwise reasonably acceptable to the Trustee.

<u>Reporting on Variances in O&M Expenditures</u>. Not later than 90 days after the end of each fiscal quarter of the Company, the Company will deliver to the Trustee and the Issuer a report showing (a) the operating data for the Project for the previous quarter and for the year to date, including total Project Revenues and total O&M Expenditures incurred and (b) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual O&M Expenditures incurred and the budgeted of the variances for any such variance of 10% or more.

Limitation on Partial Termination Payments under the Concession Agreement. Without the consent of the Trustee given solely at the written direction of 100% of the Owners of the Series 2020 Bonds, provided in accordance with the Indenture, the Company will not give its consent to the District regarding the payment of only a portion of any outstanding Applicable Termination Amount owed to the Company in connection with a refinancing

of the TABOR Portion and Additional TABOR Portion pursuant to the Concession Agreement. Nothing in the foregoing requires the Trustee's consent for the payment of the whole amount of any outstanding Applicable Termination Amount.

<u>Additional Covenants</u>. The following briefly summarizes additional covenants of the Company (which covenants may be qualified by materiality and other exceptions). See APPENDIX I—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT—Covenants of the Company."

(a) Maintenance of the Company's existence, qualification to do business, and all relevant and material rights, franchises, privileges and consents.

(b) No sale or other disposition of the Company's interests under the Concession Agreement.

(c) No creation or incurrence of any Security Interest with respect to any property or asset, including its revenues, or rights in respect thereof other than Permitted Security Interests.

(d) No suspension or abandonment of the Project.

(e) Operations and maintenance of the Project in accordance with the Concession Agreement, applicable laws, governmental approvals and required insurance policies.

(f) Maintenance of required insurance.

(g) Employment and maintenance of independent auditors of nationally recognized standing to audit its annual financial statements.

(h) Delivery of the following information to the Issuer and the Trustee:

(i) unaudited quarterly and audited annual financial statements together with certifications from the Company and, as to the audited statements, from the auditor;

(ii) simultaneously with delivery of the financial statements in subclause (i), a certificate of the Company stating that no Event of Default has occurred and is continuing;

(iii) details of: (A) the filing of any actual litigation or a claim in excess of \$10,000,000 or in any lesser amount which could reasonably be expected to have a Material Adverse Effect, (B) any Potential Event of Default or Event of Default, and (C) any penalties or damages due under the Material Project Contracts; and

(iv) notices of: (A) default or termination delivered to the Company with respect to any Material Project Contract, (B) any material insurance claims in excess of \$5,000,000, (C) the occurrence of any Force Majeure Event, Relief Event, Concessionaire Termination Event, RTD Termination Event or FM Termination Event under any Material Project Contract, (D) any new or historical Release of Hazardous Materials (other than previously disclosed) that could reasonably be expected to cause or does cause a Material Adverse Effect, (E) if the Availability Ratio of any Commuter Rail Service is less than 90% in six or more months of any eight-month period, (F) any material Governmental Approval that will not be granted or renewed in time to allow continued operation of the Project, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended, (G) any casualty, damage or loss to the Project in excess of \$5,000,000 for any one casualty or loss or in the aggregate in any calendar year, (H) any proposed condemnation, eminent domain or similar action with respect to all or a substantial portion of the property of the Project by the District or any other Governmental Authority and (I) the occurrence of any Appropriation Deficiency.

(i) Delivery to the Dissemination Agent for delivery to EMMA, in an electronic format as prescribed by the MSRB, not later than 90 days after the end of each fiscal quarter of the Company, of a report showing (A) the

operating data for the Project for the previous quarter and for the year to date, including total Project Revenues and total O&M Expenditures incurred and (B) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual O&M Expenditures incurred and the budgeted O&M Expenditures, together with a brief narrative explanation of the reasons for any such variance of 10% or more.

(j) Establishment and maintenance of each Project Account and other accounts required by the Financing Documents and no accounts maintained by the Company other than as permitted and contemplated in the Financing Documents.

(k) Compliance with all applicable laws.

(l) No expenditure of proceeds of the Series 2020 Bonds except pursuant to the Indenture and the Loan Agreement. The Company will comply with the requirements and covenants in the Federal Tax Certificate with respect to the Series 2020A Bonds.

(m) Execution and delivery of further instruments as required to carry out the Loan Agreement and ensure the liens granted pursuant to the Security Documents.

(n) Obtention of and maintenance by the Company of all necessary governmental approvals.

(o) Timely payment and discharge of taxes.

(p) No engagement by the Company in any business other than Project activities.

(q) No investments by the Company, or by the Trustee or the Account Bank, as applicable, upon direction from the Company, other than Permitted Investments and, solely with respect to the Lockbox Account Collateral, Account Agreement Permitted Investments.

(r) The Company will not create, incur or assume any indebtedness other than Permitted Indebtedness.

(s) No material transaction or agreement with any Affiliate unless entered into on fair and commercially reasonable terms.

### Events of Default under the Loan Agreement

The following events will be "Events of Default" under the Loan Agreement (subject to certain cure periods, materiality and other qualifications, as applicable). See APPENDIX I—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT—Events of Default."

(a) Failure by the Company to pay any amount required to be paid as described in the subsection "Loan Agreement—*Repayment Terms*" above.

(b) Failure by the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Loan Agreement, the Lockbox Account Agreement or any other Financing Documents, other than as referred to in (a) above.

(c) The occurrence of a Bankruptcy Event with respect to the Company.

(d) Any of the representations, warranties or certifications of the Company made in or delivered pursuant to any Financing Document, including the Loan Agreement, will prove to have been incorrect in any material respect when made.

(e) Occurrence of a Concessionaire Termination Event and such Concessionaire Termination Event continues beyond any cure period (including any extended cure period granted by the District under the Concession

Agreement) applicable to the Company and has not been waived by the District, and the District is entitled to and serves a notice of termination to the Company in writing pursuant to the terms of the Concession Agreement as a result thereof and such termination is not delayed pursuant to the disputed termination provisions of the Concession Agreement.

(f) Failure by the Company to perform or observe any material covenant, agreement or obligation under any Material Project Contract.

(g) One or more non-appealable judgments against the Company for the payment of money in an aggregate amount in excess of \$10,000,000.

(h) The Concession Agreement for any reason ceases to be a valid and binding obligation of the District.

(i) The Company suspends or abandons all or a material part of the Project or its activities to operate or maintain the Project, resulting in any Concessionaire Termination Event.

(j) Any Financing Document ceases to be in effect, unless otherwise in accordance with its terms or unless such document is replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee as instructed by Owners of a majority in the aggregate principal amount of the Series 2020 Bonds in accordance with the Indenture.

(k) The O&M Contract and/or the O&M Guaranty cease to be in full force and effect during the Operating Period, and such document is not replaced by a document reflecting all of the remaining obligations of the party being replaced, on terms and conditions (including economic terms) no less favorable to the Company taken as a whole, with an Acceptable Replacement Party, within sixty (60) days of such termination or such longer period as is reasonably necessary to effect such replacement, if corrective action is instituted by the Company within such sixty (60) day period and is diligently pursued until such replacement is effected, such extension not to exceed one hundred twenty (120) days from the date such document ceased to be in full force and effect; provided, however, there shall be no Event of Default under this clause (k) if an RTD Termination Event has occurred and is continuing.

(1) Any Security Document ceases, except in accordance with its terms or as expressly permitted under the Financing Documents, to be effective to grant a perfected Security Interest in any material portion of the Project Collateral described therein, other than as a result of actions or failure to act by the Trustee or any other Secured Party.

(m) A Change of Control with respect to the Company will have occurred.

(n) Any Insurance required under the Financing Documents is not, or ceases to be, in full force and effect at any time when it is required to be in effect.

# Remedies on Event of Default

Whenever any Event of Default under the Loan Agreement will have occurred and be continuing, the Trustee, or the Issuer with the written consent of the Trustee, may, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Company and the Account Bank:

(a) Declare that all or any part of any amount outstanding under the Loan Agreement is (i) immediately due and payable, and/or (ii) payable on demand by the Trustee, and any such notice will take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being accelerated, or if all of the Outstanding Bonds are being defeased under the terms of the Indenture or otherwise paid in full;

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Company during regular business hours of the Company;

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Loan Agreement;

(d) Pursuant to the terms of the Lockbox Account Agreement, direct the Account Bank to take any and all actions necessary to implement any available remedies with respect to the Lockbox Account Collateral under the Lockbox Account Agreement; or

(e) Pursuant to the terms of the Security Documents, take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Project Collateral under any of the Security Documents.

Any amounts collected pursuant to action taken under this section "*Remedies on Event of Default*" and the Security Documents paid to the Trustee will be applied in accordance with the provisions of the Indenture.

Any rights and remedies as are given to the Issuer under the Loan Agreement will also extend to the Owners of the Series 2020 Bonds, and the Trustee, subject to the provisions of the Indenture, will be entitled to the benefit of all covenants and agreements contained in the Loan Agreement, subject to the terms of the Security Documents.

### Amendments, Changes and Modifications

Subsequent to the issuance of the Series 2020 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Loan Agreement, the Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

For more detailed information relating to the terms of the Loan Agreement in general, including provisions relating to covenants, defaults and terminations, see APPENDIX H—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT."

### Security Agreement

The Company and the Trustee have entered into the Original Security Agreement and will enter into the Amended and Restated Security Agreement (as amended, supplemented or otherwise modified from time to time, the "Security Agreement"), pursuant to which the Company will grant a Security Interest on all of its personal property and fixtures.

#### Security Interest

In order to secure the prompt irrevocable payment in full when due of the Bond Obligations, the Company will pledge and grant to the Trustee, for the benefit of the Secured Parties, a Security Interest on all of its right, title and interest, whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located in and to all of the personal property and fixtures of the Company (the "Collateral"). The Collateral includes the Company's rights, title and interest in, to and under the Concession Agreement, the Account Collateral (which includes all "securities accounts," all "deposit accounts" and all "proceeds," all as defined under the UCC) and all accounts and general intangibles (including payment intangibles), instruments, equipment, inventory, agreements, contracts, tangible and intangible property and fixtures, governmental approvals, proceeds of insurance policies and other associated proceeds and profits, as further detailed in the Security Agreement.

Notwithstanding anything to the contrary in the Security Agreement, the Company will remain liable for all obligations under and in respect of the Collateral and nothing contained in the Security Agreement is intended to, or will be, a delegation of its duties to the Trustee or the Secured Parties.

#### Remedies

If an Event of Default under the Indenture will have occurred and be continuing, to the extent permitted by applicable law and subject to the Indenture, the Trustee may exercise remedies authorized by law, as further detailed in the Security Agreement, including: (a) the right to require the Company to assemble the Collateral owned by it at such place or places, reasonably convenient to both the Trustee and the Company, designated in the Trustee's request; (b) the right to make any reasonable compromise or settlement with respect to any of the Collateral and to extend the time of payment, arrange for payment in installments, or otherwise modify the terms of all or any part of the Collateral: (c) the right to, in its name or in the name of the Company or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but will be under no obligation to do so; (d) the right to, upon 15 days' prior written notice to the Company of the time and place, with respect to the Collateral or any part thereof that will then be or will thereafter come into the possession, custody or control of the Trustee or the other Secured Parties (or any of their respective agents), sell, lease, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Trustee deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required by this clause (d) or by applicable statute and cannot be waived); (e) the right to exercise all of the rights, remedies, powers and privileges with respect to the Collateral of a secured party under the UCC; and (f) to the full extent provided by law, the right to have a court having jurisdiction appoint a receiver, which receiver will take charge and possession of and protect, preserve, replace and repair the Collateral or any part thereof, and manage and operate the same, and receive and collect all rents, income, receipts, royalties, revenues, issues and profits therefrom.

# **Membership Interest Pledge Agreement**

DTH and the Trustee, on behalf of the Owners of the Series 2020 Bonds and the other Secured Parties, have entered into the Original Membership Interest Pledge Agreement and will enter into the Amended and Restated Membership Interest Pledge Agreement to be dated as of December 1, 2020 (as amended, supplemented or otherwise modified from time to time, the "Pledge Agreement").

### Grant

DTH will assign, pledge and grant to the Trustee, for the ratable benefit of the Owners of the Series 2020 Bonds and the other Secured Parties, a security interest in all of its respective right, title and interest in and to the following property, whether now owned or hereafter acquired (the "Pledged Collateral"):

(i) (A) its limited liability company interests (as defined in Section 18-101(10) of Title 6 of the Delaware Code) in the Company and (B) all options, warrants and rights to purchase limited liability company interests in the Company and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof (the "Pledged Membership Interests");

(ii) any Indebtedness owed to DTH by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness; and

(iii) all proceeds, products and accessions of and to any and all of the foregoing, including, without limitation, "proceeds" as defined in the UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests;

provided, however, that any and all amounts distributed or paid to DTH in accordance with the Lockbox Account Agreement shall be free of the Security Interest of the Pledge Agreement.

### Additional Pledged Collateral

Subject to the provisions of the Pledge Agreement regarding certain distribution and voting rights, upon obtaining any additional Pledged Collateral, DTH is obligated to hold such Pledged Collateral in trust for the Trustee and segregate such Pledged Collateral from its other property or funds and promptly deliver such Pledged Collateral to the Trustee, in suitable form for transfer on delivery or accompanied by duly executed instruments of transfer or assignment, where applicable.

#### Remedies

Upon the occurrence and during the continuance of an Event of Default, the Trustee has the right to exercise, in addition to all other rights and remedies granted to it, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Pledge Agreement or the Pledged Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Trustee were the sole and absolute owner of the Pledged Collateral.

Without limiting the generality of the foregoing, the Trustee, without demand, presentment, protest, advertisement, or notice of any kind has the right in such circumstances, upon ten (10) Business Days' prior written notice to DTH of the time and place, to sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral at such place or places as the Trustee deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) and at public or private sale, without demand of performance or notice of intention to effect any such disposition or of time or place of any such sale (except such notice as is required by the Pledge Agreement or by applicable statute and cannot be waived) and the Trustee or any other Person may be the purchaser, lessee or recipient of any or all of the Pledged Collateral so disposed of and thereafter hold the same absolutely free from any claim or right of whatsoever kind.

#### Non-Recourse to DTH

Notwithstanding anything to the contrary contained in the Pledge Agreement, (a) neither DTH nor any past, present or future officers, directors, employees, shareholders, agents, attorneys or representatives of DTH or any of its Affiliates (other than the Company) (collectively, the "Non-Recourse Parties") shall have any obligations or liabilities under the Financing Documents or be liable for any amount payable under the Pledge Agreement or any other Financing Document, other than obligations or liabilities with respect to any Non-Recourse Party arising under any Financing Document to which such Non-Recourse Party is a party; (b) no Secured Party shall seek a money judgment or deficiency or personal judgment against any Non-Recourse Party for payment of the Indebtedness secured by this Agreement; and (c) no property or assets of any Non-Recourse Party, other than the Pledged Collateral, shall be sold, levied upon or otherwise used to satisfy any judgment rendered in connection with any action brought with respect to the Pledge Agreement. The foregoing acknowledgments, agreements and waivers shall survive the termination of the Pledge Agreement, shall be enforceable by any Non-Recourse Party, and are a material inducement for DTH's execution of the Pledge Agreement. Nothing in this paragraph shall limit or affect, or be construed to limit or affect, the obligations and liabilities of DTH arising under the Pledge Agreement or arising from liability pursuant to any applicable Law for the willful misconduct or fraudulent actions of DTH or, with respect to any other Non-Recourse Party, arising under any Financing Document to which such Non-Recourse Party is a party.

### Leasehold Mortgages

The Company entered into the Original Leasehold Mortgages and will enter into the Amended and Restated Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for each county where the Property is located each to be dated as of December 1, 2020 (collectively, the "Leasehold Mortgages"), for the

benefit of the Trustee, pursuant to which the Company will grant a lien on all of its real property and leasehold interests.

#### Security Interest

In order to secure the prompt irrevocable and indefeasible payment in full when due of the Bond Obligations, the Company will grant to the Trustee, for the benefit of the Secured Parties, a Security Interest in all of the Company's present and future right, title and interest in and to the Property, including, without limitation, the Commuter Rail Network, the Improvements, and the Rolling Stock which it acquired through the Concession Agreement or otherwise.

As part of the security for the Loan Agreement and the Company's obligations thereunder, the Company will assign and transfer to the Trustee all of the Company's right, title and interest in and to all Leases and Rents, if any, from the Property subject to the Leasehold Mortgages. Under the Leasehold Mortgages this grant will establish a present, absolute and irrevocable transfer and assignment to the Trustee of such Leases and Rents and to authorize and empower the Trustee to enforce such Leases and to collect and receive all Rents without the necessity of further action on the part of the Company. Promptly upon reasonable request by the Trustee, the Company will execute and deliver at the Company's expense such further assignments as the Trustee may from time to time require. This assignment for additional security only. However, until the occurrence and continuance of an Event of Default, the Trustee will grant to the Company a revocable license to collect and receive all Rents, as necessary, to pay the installments of interest and principal, if any, then due and payable under the Loan Agreement and the other amounts then due and payable by the Company and to pay the costs and expenses of managing, operating and maintaining the Property, including utilities, taxes and insurance premiums, improvements and other capital expenditures.

The Leasehold Mortgages will also be a security agreement under the Uniform Commercial Code of the State, wherein the Company will grant to the Trustee a security interest of its right, title and interest in and to any Personalty. Without the prior written consent of the Trustee, the Company shall not create or permit to exist any other lien or security interest in any Personalty (exclusive of permitted exceptions under the Leasehold Mortgages). If an Event of Default by the Company has occurred and is continuing under the Leasehold Mortgages, the Trustee shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by Leasehold Mortgages or existing under applicable law. In exercising any remedies under the Leasehold Mortgages against the Company, the Trustee may exercise its remedies against the Personalty separately or together and in any order, without in any way affecting the availability of the Trustee's other remedies under the Leasehold Mortgages and/or under applicable law.

As part of the Leasehold Mortgages, the Company will agree to fully and promptly perform and comply with all material obligations of the tenant under the Concession Agreement without relying on any grace period provided therein, and if the Company shall fail to do so, the Trustee may (but shall not be obligated to) take any such action, without awaiting the expiration of any grace period, as the Trustee deems necessary to prevent or to cure any default by the Company thereunder; upon receipt by the Trustee from the District of any written notice of default by the tenant, the Trustee may rely thereon and take any such action even though the existence of such default or the nature be questioned or denied by or on behalf of the Company; the Company will grant to the Trustee, and will agree that the Trustee has the absolute and immediate right (but no obligation) to enter in and upon the Property or any part to such extent and as often as the Trustee, in its sole discretion, deems necessary in order to prevent or to cure any such default by the Company; the Company shall pay to the Trustee, immediately and without deduction, demand, offset or counterclaim, all sums paid by the Trustee pursuant to the Leasehold Mortgages, with interest thereon from the date of each such payment at the default rate under the Loan Agreement; and, without limitation to any other provision hereof, all sums so paid and expended by the Trustee, and the interest, shall be added to and be secured by the lien of the Leasehold Mortgages. Under the Leasehold Mortgages, the Company will agree not to suffer or incur, or permit to be suffered or incurred, any default on the part of the tenant under the Concession Agreement.

### Remedies

The Leasehold Mortgages provide that the occurrence of an Event of Default under the Loan Agreement shall be deemed an Event of Default under the Leasehold Mortgages. If an Event of Default shall occur and be continuing under the Leasehold Mortgages, the Trustee may, subject to the terms of the Loan Agreement and the Leasehold Mortgages, take such actions to protect and enforce its rights against the Company and its respective rights in and to the Property, including: (a) requesting the appointment of a receiver for the Property; (b) causing the Property encumbered by the Leasehold Mortgages or any part thereof to be sold under a power of sale in the manner set forth in the Leasehold Mortgages and the law of the State; (c) the Trustee may but shall not be obligated to perform or attempt to perform any covenant of the Company and any payment made or expense incurred in the Property and of all books, records, and accounts relating thereto and to exercise without interference from the Company any and all rights which the Company has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of the Trustee in collecting such Rents all costs, expenses, and liabilities of every character incurred by the Trustee in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property; or (e) exercise any remedies under the UCC.

### Lockbox Account Agreement

Pursuant to the Lockbox Account Agreement, certain Lockbox Project Accounts were and will be established in the name of the Company and under the exclusive control of the Account Bank. The Company has pledged and granted to the Trustee, for the benefit of the Secured Parties, a security interest in and lien on such Lockbox Project Accounts and the funds and investments on deposit therein. All Project Revenues, including Service Payments, will be deposited into certain Project Accounts, and the Company may authorize the Account Bank to credit funds to or deposit funds in, and to withdraw and transfer funds from, each such Lockbox Project Account to pay for or reimburse (a) a portion of the Project costs, (b) Cost of Issuance of any Bonds pursuant to the Indenture, and (c) other uses in accordance with the Lockbox Account Agreement, subject to the satisfaction by the Company of certain requirements for withdrawals and transfers set forth in the Lockbox Account Agreement. See "ACCOUNTS AND FLOW OF FUNDS" for a further description.

### **District Not Liable on Bonds**

The Series 2020 Bonds are special limited obligations of the District payable solely from payments received from the Company pursuant to the Loan Agreement. The Owners of the Series 2020 Bonds may not look to any revenues of the District for repayment of the Series 2020 Bonds. The only sources of repayment of the Bonds are revenues provided by the Company to the District pursuant to the Loan Agreement and the Security Interests that are part of the Trust Estate. The Series 2020 Bonds do not constitute an indebtedness of the District or a multiple fiscal year obligation of the District within the meaning of any provisions of the State Constitution or the laws of the State.

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# ACCOUNTS AND FLOW OF FUNDS

### General

Various accounts, including the Project Accounts, have been or will be created under the Indenture and the Lockbox Account Agreement in relation to the financing and operation of the Project, including the payment of principal of and interest on the Bonds when due.

### Accounts Under the Indenture

The Debt Service Reserve Account, the Debt Service Fund and the Rebate Fund are established under the Indenture for the benefit of the Owners of the Bonds. For more information on the Debt Service Reserve Account, the Debt Service Fund and the Rebate Fund, see "SECURITY FOR THE BONDS—Indenture." All moneys held under the Indenture will be distributed in accordance with the Indenture as set forth herein and in "SECURITY FOR THE BONDS—Indenture."

In connection with the Series 2010 Refinancing, the Trustee will transfer certain funds on deposit in the Debt Service Reserve Account directly into the Redemption Account (or an appropriate sub-account thereof) to pay all or a portion of the principal and redemption price of the outstanding Series 2010 Bonds.

### Lockbox Project Accounts Under the Lockbox Account Agreement

The following Lockbox Project Accounts will be established (or in the case of clause (a)(iii), were established and created pursuant to the Original Lockbox Account Agreement and in the case of clause (d), was established and created with another financial institution in accordance with "—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Operating Account" below) under the Lockbox Account Agreement:

- (a) the Revenue Account, including (i) the Series 2020 Interest Sub-Accounts, (ii) the Series 2020 Principal Sub-Accounts and (iii) the Series 2010 Interest Sub-Account and the Series 2010 Principal Sub-Account;
- (b) the Distribution Account;
- (c) the Renewal Works Reserve Account;
- (d) the Operating Account; and
- (e) the Borrower Change In Law Contingency Account.

Upon the issuance of any Additional Parity Bonds, the Account Bank is authorized and instructed pursuant to the Lockbox Account Agreement to establish within the Revenue Account an interest sub-account and a principal sub-account, each subject to the Lockbox Account Agreement, for each series of Additional Parity Bonds issued (each such interest sub-account and the Series 2020 Interest Sub-Accounts, an "Applicable Interest Sub-Account" and each such principal sub-account and the Series 2020 Principal Sub-Accounts, an "Applicable Principal Sub-Account"). The Account Bank may establish and maintain additional sub-accounts within any of the Lockbox Project Accounts upon the written instruction of the Company. In such written instruction, the Company will expressly provide for the purposes and the term of any such sub-accounts and for any deposits and withdrawals in those circumstances.

Except as expressly provided in the Lockbox Account Agreement, all of the Lockbox Project Accounts will be under the control of the Account Bank and the Company will not have any right to withdraw funds from any Lockbox Project Account.

The Account Bank, pursuant to a written direction of the Company, shall transfer funds on deposit in the Series 2010 Interest Sub-Account and the Series 2010 Principal Sub-Account directly into the Redemption Account (or an appropriate sub-account thereof) in connection with the Series 2010 Refinancing. Upon completion of the Series 2010 Refinancing, and the transfer of the remaining funds from the Series 2010 Interest Sub-Account and the Series 2010 Principal Sub-Account in accordance with the Indenture and the Loan Agreement, such accounts shall be closed by the Account Bank.

### Monthly Reports Between the Account Bank and the Trustee

To facilitate the administration of the funds and accounts under the Indenture and the related transfers between such funds and accounts and the accounts established and created pursuant to the Lockbox Account Agreement, as required under the Indenture, the Trustee provides a monthly report to the Account Bank four Business Days prior to each Transfer Date setting forth, among other things, the balance for each fund and account, including any sub-accounts, established and created pursuant to the Indenture. The Lockbox Account Agreement sets forth a similar monthly reporting requirement for the Account Bank and the Trustee.

### Description of Lockbox Project Accounts Under the Lockbox Account Agreement

#### **Revenue** Account

All Project Revenues received by the Company and any Applicable Termination Amount received by the Company at any time (subject to the sections entitled "SECURITY FOR THE BONDS—Indenture—Use of Moneys Received from Exercise of Remedies," "Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" and "Termination Proceeds" herein) will be deposited into the Revenue Account. Additionally, to the extent on any date of determination, amounts on deposit in the Debt Service Reserve Account are in excess of the Debt Service Reserve Requirement, such excess amounts will be deposited into the Revenue Account upon written instruction of the Company.

Subject to the subsection "Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" below, the Account Bank will make withdrawals, transfers and payments from the Revenue Account in the amounts, at the times and for the purposes specified in the Lockbox Account Agreement. Such withdrawals, transfers and payments will be made each month on the Transfer Date in the order of priority set forth in the subsection "Flow of Funds—Revenue Account" below.

The Company will deliver to the Account Bank (with a copy to the Trustee), the Revenue Account Transfer Certificate signed by a Company Representative, not later than the third Business Day prior to each Transfer Date. Each such Revenue Account Transfer Certificate will set forth the amounts proposed to be transferred from the Revenue Account to each other Project Account or other account of the Company on such Transfer Date in accordance with the Lockbox Account Agreement. Notwithstanding the foregoing, if the effective interest rate on the applicable Bonds has been provided or is known to the Account Bank at the time of the proposed transfer, the Account Bank is authorized under the Lockbox Account Agreement to transfer moneys on each Transfer Date from moneys on deposit in the Revenue Account in accordance with clauses <u>fifth and sixth</u> in the subsection "Flow of Funds—Revenue Account" below to the Applicable Interest Sub-Account and the Applicable Principal Sub-Account of the Revenue Account, in such appropriate amounts, without receipt of any Revenue Account Transfer Certificate.

Neither the Trustee nor the Account Bank will be obligated to monitor or verify (a) the accuracy of any Revenue Account Transfer Certificate provided to the Account Bank (with a copy to the Trustee) for the transfer or deposit of funds with respect to the Revenue Account, or (b) the use of amounts withdrawn from the Revenue Account pursuant to written instructions given by the Company.

#### **Distribution** Account

Any amounts payable to the Distribution Account pursuant to clause <u>twelfth</u> under the subsection "Flow of Funds" below will be paid to the Distribution Account and will remain in the Distribution Account until and unless

the Company certifies that the Restricted Payment Conditions (as described below) have been satisfied in the applicable Distribution Account Release Certificate.

Funds on deposit in the Distribution Account may be paid to the Company (or to the order of the Company) on any Distribution Date; provided that (a) pursuant to a Distribution Account Release Certificate (substantially in the form set forth in the Lockbox Account Agreement), a Company Representative has certified that all of the Restricted Payment Conditions were satisfied on the Calculation Date immediately preceding the requested Distribution Date (or if such Distribution Date is a Calculation Date, on such Calculation Date) and (b) the Company delivers such Distribution Account Release Certificate signed by a Company Representative to the Account Bank (with a copy to the Trustee) within forty-five (45) days after the relevant Calculation Date and not later than the 3<sup>rd</sup> Business Day prior to the requested Distribution Date. The amount of funds available to be paid to the Company on any Distribution Date will be equal to the amount of funds in the Distribution Account on the relevant Calculation Date.

To the extent that any funds are on deposit in the Distribution Account, at the direction of the Company pursuant to a Lock-Up Funds Application Certificate (substantially in the form set forth in the Lockbox Account Agreement) delivered to the Account Bank (with a copy to the Trustee) not later than the 3<sup>rd</sup> Business Day prior to the expected date of the applicable transfers (which can be, but is not required to be, a Transfer Date) as set forth in such certificate, the Account Bank will apply the amount on deposit in the Distribution Account to fund a shortfall in clauses <u>first</u> through <u>seventh</u> under the subsection "Flow of Funds" below, as specified in the Lock-Up Funds Application Certificate.

### **Renewal Works Reserve Account**

In the event that the O&M Contractor fails to provide a Renewal Works Letter of Credit in the amount required under the O&M Contract (the difference between the face amount of the Renewal Works Letter of Credit being the "Renewal Works Deficiency"), the Renewal Works Reserve Account will be funded in accordance with the provisions of clause <u>eighth</u> under the subsection "Flow of Funds" below. In the event that the O&M Contractor provides the Renewal Works Letter of Credit that it otherwise failed to deliver, the amount of the Renewal Works Deficiency that resulted from its failure to deliver such Renewal Works Letter of Credit will be released to the Revenue Account by the Account Bank without further instruction. Amounts in the Renewal Works Reserve Account Withdrawal Certificate, provided that the Account Bank has received (with a copy to the Trustee) such Renewal Works Reserve Account Withdrawal Certificate signed by a Company Representative at least three Business Days in advance of the requested transfer.

### **Operating** Account

Project Revenues received by the Company will be transferred into the Operating Account in accordance with the provisions of the subsection "Flow of Funds" below. Any withdrawals from the Operating Account will not require compliance with any conditions (except that amounts withdrawn will be applied by the Company to pay O&M Expenditures). Unless a Trustee Enforcement Notice and Direction has been delivered to the Account Bank (or to the applicable financial institution with whom a replacement Operating Account is established, as the case may be), the Company will have the right to make withdrawals from the Operating Account. Notwithstanding anything to the contrary in this paragraph, the Company may establish an operating account with another financial institution if (1) the replacement operating account contains a "deposit account" and, at the option of the Company, a "securities account" (both as defined in the UCC), (2) the Company executes a control agreement in the form attached to the Lockbox Account Agreement, or any other form of control agreement as agreed among the applicable financial institution, the Company and the Trustee and (3) the Company provides notice of the replacement operating account to the Account Bank (with a copy to the Trustee). In accordance with the Original Lockbox Account Agreement, the Company established, and maintains, the Operating Account with another financial institution subject to a control agreement.

### **Borrower Change In Law Contingency Account**

The Borrower Change In Law Contingency Account may be funded at any time with funds on deposit in the Revenue Account in accordance with the Lockbox Account Agreement. Amounts deposited in the Borrower Change In Law Contingency Account may be used for any payments required by the Company in connection with Incurred Costs related to a Change in Law pursuant to the Concession Agreement. Pursuant to written instructions signed by a Company Representative delivered to the Account Bank (with a copy to the Trustee) not later than the third Business Day prior to the expected date of applicable withdrawals and transfers, the Company will have the right to make withdrawals from the Borrower Change In Law Contingency Account for such purposes or to instruct the Account Bank to transfer any moneys deposited in the Borrower Change In Law Contingency Account to the Revenue Account.

#### **Restricted Payment Conditions**

Pursuant to the payment provisions set forth in the subsection "Flow of Funds" below, certain transfers, withdrawals and distributions may be made solely upon receipt by the Account Bank of a certificate from the Company, reasonably satisfactory to the Account Bank, certifying that all of the following conditions, on or with effect from any applicable date of determination (the "Restricted Payment Conditions"), are satisfied:

(a) the amount on deposit in the Debt Service Reserve Account is sufficient to satisfy the Debt Service Reserve Requirement and the Renewal Works Deficiency is on deposit in the Renewal Works Reserve Account;

(b) the Total DSCR as of the most recent Calculation Date is greater than or equal to 1.10:100;

(c) no Event of Default or Potential Event of Default pursuant to the terms of the Bonds and no Concessionaire Termination Event pursuant to the terms of the Concession Agreement has occurred and is continuing or would exist as a result of the making of the payment; and

(d) if a Force Majeure Event has occurred and is continuing, the District has not failed to pay and has not indicated in writing to the Company that it has no obligation to pay the Service Payment under Section 39.4 or Section 39.5 of the Concession Agreement.

### Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default

The Account Bank will comply with any certificate of the Company delivered to it pursuant to the Lockbox Account Agreement or the Indenture.

The Account Bank will not be obligated to monitor or verify (a) the accuracy of any certificate delivered to it pursuant to the Lockbox Account Agreement or other written instructions provided to the Account Bank for the transfer or deposit of funds with respect to any Lockbox Project Account, or (b) the use of amounts withdrawn from the Lockbox Project Accounts pursuant to written instructions given by the Company.

Upon receipt by the Trustee of enforcement directions pursuant to the Indenture and the occurrence and during the continuance of an Event of Default under the Financing Documents, the Trustee may notify the Account Bank in writing (with a copy delivered to the Company), of such Event of Default (each notice a "Trustee Enforcement Notice and Direction"), whereupon, to the extent provided in such Trustee Enforcement Notice and Direction (as the same may be supplemented and modified) (a) the Company will not have any further right to disbursements from the Project Accounts, and (b) the Trustee may (i) direct the Account Bank to liquidate and transfer any amounts then invested in Account Agreement Permitted Investments to the Lockbox Project Accounts or the Debt Service Fund or reinvest such amounts in other Account Agreement Permitted Investments as the Trustee may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted under the Lockbox Account Agreement or to enable the Account Bank, as agent for the Secured Parties, or the Trustee to exercise and enforce the Secured Parties' rights and remedies under the Lockbox Account Agreement or to any Lockbox Account Collateral, (ii) exercise any and all rights

and remedies available to it under the Lockbox Account Agreement or the other Financing Documents and/or as a secured party under the UCC, and (iii) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Lockbox Account Collateral (or any portion thereof) as the Trustee may determine in its sole discretion.

Any amounts collected pursuant to action taken upon delivery of a Trustee Enforcement Notice and Direction and paid to the Trustee will be applied in accordance with the provisions of the Indenture.

### **Termination Proceeds**

The Company will deposit in the Revenue Account proceeds of any Applicable Termination Amount, including any TABOR Portion or Additional TABOR Portion, received by the Company under the Concession Agreement in respect of a termination of the Concession Agreement, unless the Bonds have been accelerated, in which case, such proceeds shall be applied in accordance with "SECURITY FOR THE BONDS—Indenture—Use of Moneys Received from Exercise of Remedies." In connection with redemption of the Bonds as set forth in the Indenture, the Account Bank is instructed by the Company to deliver any lump sums in respect of such Applicable Termination Amount to the Trustee for application to the applicable sub-account of the Debt Service Fund.

### **Flow of Funds**

### **Revenue** Account

Pursuant to the Lockbox Account Agreement, all Project Revenues and any Applicable Termination Amount received by the Company at any time (subject to the sections entitled "SECURITY FOR THE BONDS— Indenture—Use of Moneys Received from Exercise of Remedies," "Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" and "Termination Proceeds" herein) are required to be deposited into the Revenue Account, and subject to the limitations set forth in this section, all amounts deposited into the Revenue Account will be applied each month on the Transfer Date as follows and in accordance with the Revenue Account Transfer Certificate delivered by the Company to the Account Bank as described above under subsection "Lockbox Project Accounts Under the Lockbox Account Agreement":

Fees, Administrative Costs, and other Concessionaire Expenses

 $\mathbf{1}$ 

Payments to the Rebate Fund

Project Costs ↓

O&M Expenditures

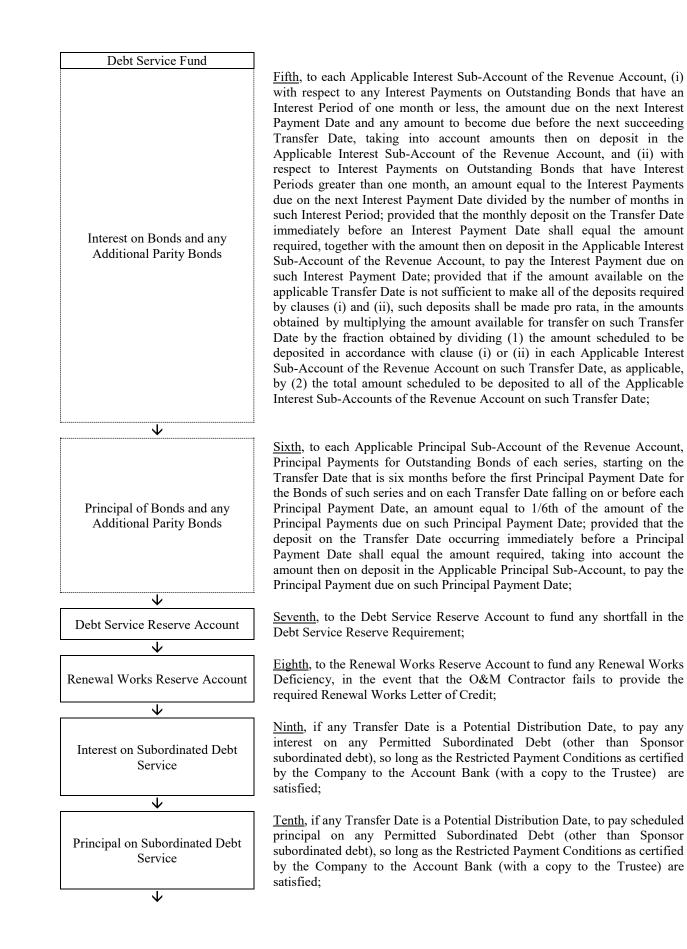
 $\mathbf{1}$ 

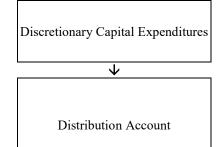
<u>First</u>, to the payment of fees, administrative costs and expenses due to the Trustee and the Account Bank under the Financing Documents, and to the payment of rating agency costs and to the payment of general overhead, to pay Reserved Rights to the Issuer, and other costs incurred by the Company in the ordinary course of business (but not including O&M Expenditures);

<u>Second</u>, to any payments then due and payable by the Company to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt Additional Parity Bonds;

Third, to the payment of Project costs;

<u>Fourth</u>, to the Operating Account, an amount equal, together with amounts then on deposit therein, to the projected O&M Expenditures for one (1) month following the date of such transfer;





<u>Eleventh</u>, if any Transfer Date is a Potential Distribution Date, to pay any optional capital expenditures, so long as the Restricted Payment Conditions as certified by the Company to the Account Bank (with a copy to the Trustee) are satisfied; and

<u>Twelfth</u>, if any Transfer Date is a Potential Distribution Date, to the Distribution Account, unless the Company has otherwise instructed the Account Bank to retain all or a portion of the amount otherwise payable to the Distribution Account in the Revenue Account pursuant to the Revenue Account Transfer Certificate delivered to the Account Bank (with a copy to the Trustee);

Notwithstanding anything to the contrary set forth above or in the Lockbox Account Agreement, the Account Bank will agree (without further instruction) to transfer moneys on deposit in the Applicable Interest Sub-Account or Applicable Principal Sub-Account of the Revenue Account as follows:

(a) On any Transfer Date immediately prior to any Interest Payment Date, after making the transfers required by clauses <u>first</u> through <u>fifth</u> of the subsection "Flow of Funds—Revenue Account," amounts on deposit in each Applicable Interest Sub-Account will be transferred to the Trustee and applied by the Trustee to the applicable Interest Account of the Debt Service Fund, or any appropriate sub-account thereof, to make the required payments of interest on the Bonds on such Interest Payment Date, after taking into account the amounts then on deposit in such Interest Account of the Debt Service Fund (if any) for payment of interest on the Bonds;

(b) On any Transfer Date immediately prior to any Principal Payment Date, after making the transfers required by clauses <u>first</u> through <u>sixth</u> of the subsection "Flow of Funds—Revenue Account," amounts on deposit in each Applicable Principal Sub-Account will be transferred to the Trustee and applied by the Trustee to the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, to make the required payments of principal on the Bonds on such Principal Payment Date, after taking into account the amounts then on deposit in such Principal Account of the Debt Service Fund (if any) for payment of the principal amount of the Bonds;

(c) If on any Transfer Date immediately prior to any Interest Payment Date, after giving effect to the transfers set forth in clause (a) above but before giving effect to the transfers set forth in clause (b) above, to the extent amounts on deposit in the Applicable Interest Sub-Account together with funds in the applicable Interest Account of the Debt Service Fund, or any appropriate sub-account thereof, are insufficient to pay the interest due on the next Interest Payment Date, amounts on deposit first in the Distribution Account, second in the Renewal Works Reserve Account, and third in the Applicable Principal Sub-Account will be transferred to the Trustee for deposit by the Trustee to the applicable Interest Account of the Debt Service Fund, or any appropriate sub-account thereof, to enable the Trustee to make the required payments of interest on the Bonds on such Interest Payment Date; and

(d) If on any Transfer Date immediately prior to any Principal Payment Date, after giving effect to the transfers set forth in clauses (a) through (c) above, to the extent amounts on deposit in the Applicable Principal Sub-Account together with funds in the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, are insufficient to pay the principal due on the next Principal Payment Date, amounts on deposit first in the Distribution Account and second in the Renewal Works Reserve Account, will be transferred to the Trustee for deposit by the Trustee to the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, to enable the Trustee to make the required payments of principal on the Bonds on such Principal Payment Date.

### Additional Conditions and Requirements with Respect to Flow of Funds

Notwithstanding anything described above under subsection "Flow of Funds" to the contrary:

(a) commencing on January 1 of any Fiscal Year for which adequate funds to meet any RTD Appropriation Obligations have not been included in such Fiscal Year's RTD Adopted Budget (an "Appropriation Deficiency") and for so long as such funds are not so included in such annual budget or a subsequent annual budget of the District, the TABOR Portion received by the Company will be applied in the following order: <u>first</u>, to the payment of fees, administrative costs and other concessionaire expenses; <u>second</u>, to payments to the Rebate Fund; <u>third</u>, to pay Interest Payments for deposit into each Applicable Interest Sub-Account of the Revenue Account; <u>fourth</u>, to pay Principal Payments for deposit into each Applicable Principal Sub-Account of the Revenue Account; <u>fifth</u>, to the Operating Account (for the payment of demobilization costs and other reasonable O&M Expenditures incurred in connection with such demobilization or suspension of work on the Project), and <u>seventh</u> through <u>twelfth</u> of the subsection "Flow of Funds—Revenue Account"

(b) if any Transfer Date is not a Potential Distribution Date, any amounts remaining after the applications of funds through <u>eighth</u> of the subsection "Flow of Funds—Revenue Account" above will be retained in the Revenue Account.

The Company agrees to notify the Trustee pursuant to the terms of the Loan Agreement and following receipt of such notice, the Trustee agrees to notify the Account Bank on or by January 1 of each Fiscal Year if an Appropriation Deficiency has occurred. On or before the Closing Date, the Company will provide to the Account Bank (with a copy to the Trustee) a schedule (the "TABOR Schedule") setting forth the TABOR Portion applicable each month for the purposes of making the calculations required above, and thereafter shall promptly provide to the Account Bank an updated TABOR Schedule in the event of any change to the TABOR Portion applicable each month.

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# PROJECTED DEBT SERVICE COVERAGE

## **Estimated Annual Debt Service Requirements**

(dollars in thousands)

Year <sup>+</sup>	2020 Series A Principal (A)	2020 Series A Interest (B)	Total Debt Service on the Series 2020A Bonds (A)+(B) = (C)	2020 Series B Principal (D)	2020 Series B Interest (E)	Total Debt Service on the Series 2020B Bonds (D)+(E) = (F)	Total Debt Service on the Series 2020 Bonds (C)+(F)
2021++	-	14,245	14,245	-	299	299	14,544
2022	-	13,251	13,251	-	279	279	13,529
2023	7,245	13,236	20,481	-	279	279	20,759
2024	10,600	12,774	23,374	-	279	279	23,653
2025	12,570	12,197	24,767	-	279	279	25,046
2026	10,995	11,731	22,726	-	279	279	23,004
2027	13,850	11,115	24,965	-	279	279	25,243
2028	15,350	10,456	25,806	-	279	279	26,084
2029	16,025	9,673	25,698	-	279	279	25,977
2030	16,535	8,868	25,403	-	279	279	25,681
2031	20,155	8,018	28,173	-	279	279	28,451
2032	24,655	6,902	31,557	-	279	279	31,835
2033	31,670	5,821	37,491	-	279	279	37,769
2034	32,955	4,541	37,496	-	279	279	37,775
2035	30,870	3,210	34,080	-	279	279	34,358
2036	16,550	2,223	18,773	-	279	279	19,052
2037	7,850	1,701	9,551	-	279	279	9,830
2038	13,575	1,387	14,962	-	279	279	15,240
2039	17,430	715	18,145	-	279	279	18,424
2040	5,940	119	6,059	6,965	279	7,244	13,302
Total	\$304,820	\$152,180	\$457,000	\$6,965	\$5,593	\$12,558	\$469,557

+ Reflects payments made from January 16 of the listed year through January 15 of the subsequent year.

++ Reflects a July 15, 2021 initial scheduled Debt Service Payment Date.

The following chart illustrates the projected Service Payments, Operating Expenses and debt service for the Project as well as the forecasted debt service coverage ratios, based on the projected debt service shown in the table above.

	(dollars in thousands)									
Year <sup>+</sup>	TABOR Portion <sup>(1)</sup> (A)	Non-TABOR Payments <sup>(2)</sup> (B)	Interest Income (C)	Fees and Operating Expenses <sup>(3)</sup> (D)	Change in Working Capital (E)	<b>Operating Cash Flow</b> (A)+(B)+(C)+(D)+(E)=(F)	Bonds Interest Expense (G)	Principal Repayment (H)	<b>Total</b> <b>DSCR</b> <sup>(4)</sup> (F) / ((G)+ (H))	
2021	44,880	57,513	77	(58,124)	1,468	45,815	(14,544)	-	3.15x	
2022	43,235	60,212	78	(60,003)	(150)	43,371	(13,529)	-	3.21x	
2023	44,407	64,360	90	(64,158)	(438)	44,260	(13,514)	(7,245)	2.13x	
2024	45,827	82,448	113	(81,960)	(1,589)	44,838	(13,053)	(10,600)	1.90x	
2024	48,429	108,032	117	(109,119)	(2,227)	45,232	(12,476)	(12,570)	1.81x	
2025	43,140	71,883	106	(71,714)	3,308	46,724	(12,009)	(10,995)	2.03x	
2020	44,092	71,587	114	(71,401)	(56)	44,336	(11,393)	(13,850)	1.76x	
2027	45,295	78,910	114	(78,705)	(665)	44,948	(10,734)	(15,350)	1.72x	
2020	46,771	90,817	119	(90,552)	(1,146)	46,008	(9,952)	(16,025)	1.77x	
2029	60,039	143,293	128	(144,870)	(5,268)	53,322	(9,146)	(16,535)	2.08x	
2030	47,878	83,853	124	(83,684)	5,757	53,927	(8,296)	(20,155)	1.90x	
2031	54,081	82,646	143	(82,373)	(385)	54,113	(7,180)	(24,655)	1.70x	
2032	66,574	85,879	162	(85,520)	(1,363)	65,732	(6,099)	(31,670)	1.74x	
2033	83,080	113,231	184	(112,381)	(3,672)	80,442	(4,820)	(32,955)	2.13x	
2034	95,940	153,010	190	(169,402)	(2,882)	76,855	(3,488)	(30,870)	2.24x	
2035	42,465	113,119	100	(112,631)	6,372	49,425	(2,502)	(16,550)	2.59x	
2030	47,911	107,800	86	(107,486)	(49)	48,262	(1,980)	(7,850)	4.91x	
2037	55,842	115,852	85	(115,417)	(1,336)	55,026	(1,665)	(13,575)	3.61x	
2030	72,222	141,127	121	(140,259)	(3,486)	69,724	(994)	(17,430)	3.78x	
2039	80,884	165,584	107	(182,555)	(1,149)	62,871	(397)	(12,905)	4.73x	
2040	76,368	130,989	76	(132,340)	1,867	76,960	-	-	-	
2041	11,622	119,561	14	(119,740)	6,333	17,790	-	-	-	
2042	13,706	176,645	11	(175,970)	(4,935)	9,459	-	-	-	
2045	23,751	173,567	19	(172,910)	(536)	23,891	-	-	-	
2045	-	-	-	-	11,711	11,711	-	-	-	
Total	1,238,437	2,591,917	2,478	(2,623,274)	5,482	1,215,040	(157,772)	(311,785)		

**Financial Forecasts** (dollars in thousands)

#### Notes to previous Table:

- + Columns reflect cash flows in each calendar year (ending December 31), with the exception of debt service, which reflects cash flows beginning January 16 of the listed year through January 15 of the subsequent year.
- (1) In accordance with the schedule of the TABOR Portion set forth in the Concession Agreement, as adjusted to reflect the sharing by the Company and the District of the Refinancing gain related to the Series 2020 Bonds in accordance with the terms of the Concession Agreement, as agreed by the Company and the District.
- (2) Consists of all Service Payments received other than the TABOR Portion, as set forth in the Concession Agreement.
- (3) This figure includes Company costs, overhead, ongoing bond Trustee and rating fees, changes in working capital, O&M Expenditures, and Insurance and Renewal Works costs as per the O&M Contract, but not changes in working capital.
- (4) Total Debt Service Coverage Ratio or Total DSCR means for any 12-month period ending on a Calculation Date the ratio of A divided by B where: A = the Borrower's Free Cash Flow for such period; and B = the payment of all scheduled principal and interest on the Series 2020 Bonds during such period.
- Note: Service Payments received by the Company, including the TABOR Portion, will be deposited in the Revenue Account and applied to payments of various costs and expenses. Absent a failure by the District to appropriate an RTD Appropriation Obligation in its adopted annual budget, Service Payments deposited in the Revenue Account will be applied to operation and maintenance costs prior to payment of debt service. See "ACCOUNTS AND FLOW OF FUNDS."

Source: Concession Agreement and the Company

The following chart compares the annual TABOR Portion projected by the Company to be paid in each year to annual debt service on the Series 2020 Bonds.

#### **TABOR Portion Compared to the Debt Service on the Series 2020 Bonds**

Year <sup>+</sup>	Total Service Payments $\dot{\dagger}^{\pm}$	TABOR Portion <sup>±</sup>	Debt Service on the Series 2020 Bonds	TABOR / Total Debt Service
2021	102,393	44,880	(14,544)	3.09x
2022	103,447	43,235	(13,529)	3.20x
2023	108,766	44,407	(20,759)	2.14x
2024	128,274	45,827	(23,653)	1.94x
2025	156,460	48,429	(25,046)	1.93x
2026	115,024	43,140	(23,004)	1.88x
2027	115,679	44,092	(25,243)	1.75x
2028	124,205	45,295	(26,084)	1.74x
2029	137,587	46,771	(25,977)	1.80x
2030	203,332	60,039	(25,681)	2.34x
2031	131,731	47,878	(28,451)	1.68x
2032	136,727	54,081	(31,835)	1.70x
2033	152,453	66,574	(37,769)	1.76x
2034	196,311	83,080	(37,775)	2.20x
2035	248,950	95,940	(34,358)	2.79x
2036	155,584	42,465	(19,052)	2.23x
2037	155,711	47,911	(9,830)	4.87x
2038	171,694	55,842	(15,240)	3.66x
2039	213,348	72,222	(18,424)	3.92x
2040	246,467	80,884	(13,302)	6.08x
2041	207,357	76,368	-	-
2042	131,183	11,622	-	-
2043	190,352	13,706	-	-
2044	197,317	23,751	-	-
Total	3,830,354	1,238,437	(469,557)	

(dollars in thousands)

<sup>+</sup> Columns reflect cash flows in each calendar year (ending December 31), with the exception of debt service, which reflects cash flows beginning January 16 of the listed year through January 15 of the subsequent year.

± Total Service Payment is calculated based on provisions of the Concession Agreement. The TABOR Portion of the Service Payment is in accordance with schedule attached to the Concession Agreement, as adjusted to reflect the sharing by the Company and the District of the Refinancing gain related to the Series 2020 Bonds in accordance with the terms of the Concession Agreement, as agreed by the Company and the District.

The indexed portion of Service Payments, payments to the O&M Contractor, Renewal Works and Company overhead costs are all linked to a weighted average inflation or growth index. The index is calculated as the weighted average of a Labor Index, a Materials Index and a Consumer Price Index, assuming the following annual percentage increases: Labor—3.3%; Materials—3.8%; and Consumer Price Index—2.5% and the following weighting percentages: Labor—50%, Materials—24.5%, and Consumer Price Index—25.5%.

Source: Concession Agreement and the Company

Projected Cash Flow and Debt Service	Coverage for the Series 2020	<b>Bonds During Operations</b>

	, and the second s		(	dollars in thousan	ds)			
Year <sup>+</sup>	Revenues †‡ <sup>(1)</sup> (A)	Company Overhead Expenditure ‡ <sup>(2)</sup> (B)	O&M Expenditure ‡ <sup>(3)</sup> (C)	Renewal Works Expenditures ‡ <sup>(4)</sup> (D)	Change in Working Capital (E)	Available for Debt Service (5) (A+B+C+D+E)	Debt Service on the Series 2020 Bonds	Last 12 Months Total DSCR (6)
2021	102,470	(3,869)	(53,850)	(405)	1,468	45,815	(14,544)	3.15x
2021	102,470	(3,959)	(55,577)	(468)	(150)	43,371	(14,544) (13,529)	3.21x
2022	103,324	(4,086)	(57,355)	(2,718)	(438)	44,260	(13,32) (20,759)	2.13x
2023	128,388	(4,228)	(59,486)	(18,246)	(1,589)	44,838	(23,653)	1.90x
2021	156,577	(4,352)	(61,355)	(43,412)	(2,227)	45,232	(25,035)	1.90x
2025	115,130	(4,491)	(63,463)	(3,759)	3,308	46,724	(23,004)	2.03x
2027	115,793	(4,636)	(65,639)	(1,127)	(56)	44,336	(25,243)	1.76x
2028	124,318	(4,797)	(67,937)	(5,971)	(665)	44,948	(26,084)	1.72x
2029	137,706	(4,939)	(69,927)	(15,686)	(1,146)	46,008	(25,977)	1.77x
2030	203,460	(5,098)	(72,180)	(67,592)	(5,268)	53,322	(25,681)	2.08x
2031	131,855	(5,262)	(73,845)	(4,578)	5,757	53,927	(28,451)	1.90x
2032	136,871	(5,445)	(76,437)	(491)	(385)	54,113	(31,835)	1.70x
2033	152,615	(5,606)	(79,381)	(533)	(1,363)	65,732	(37,769)	1.74x
2034	196,495	(5,787)	(81,945)	(24,649)	(3,672)	80,442	(37,775)	2.13x
2035	249,140	(5,974)	(84,587)	(78,842)	(2,882)	76,855	(34,358)	2.24x
2036	155,684	(6,183)	(87,562)	(18,886)	6,372	49,425	(19,052)	2.59x
2037	155,798	(6,366)	(90,141)	(10,980)	(49)	48,262	(9,830)	4.91x
2038	171,779	(6,572)	(93,060)	(15,785)	(1,336)	55,026	(15,240)	3.61x
2039	213,469	(6,785)	(96,067)	(37,408)	(3,486)	69,724	(18,424)	3.78x
2040	246,575	(7,023)	(99,453)	(76,078)	(1,149)	62,871	(13,302)	4.73x
2041	207,433	(5,856)	(102,390)	(24,095)	1,867	76,960	-	-
2042	131,197	(5,267)	(105,714)	(8,760)	6,333	17,790	-	-
2043	190,363	(5,438)	(112,079)	(58,453)	(4,935)	9,459	-	-
2044	197,336	(5,671)	(117,875)	(49,364)	(536)	23,891	-	-
2045	-	-	-	-	11,711	11,711	-	-
Total	3,832,832	(127,688)	(1,927,303)	(568,283)	5,482	1,215,040	(469,557)	

Columns reflect cash flows in each calendar year (ending December 31), with the exception of debt service, which reflects cash flows beginning January 16 of the listed year through January 15 of the subsequent year.

Calculated based upon provisions of the Concession Agreement.

The indexed portion of Service Payments, payments to the O&M Contractor, Renewal Works and Company overhead costs are all t linked to a weighted average inflation or growth index. The index is calculated as the weighted average of a Labor Index, a Materials Index and a Consumer Price Index, assuming the following annual percentage increases: Labor-3.3%; Materials-3.8%; and Consumer Price Index-2.5% and the following weighting percentages: Labor-50%, Materials-24.5%, and Consumer Price Index-25.5%.

- (1) Revenues consist of: (a) Service Payments expected to be paid by the District to the Company under the Concession Agreement, assuming no deductions (the TABOR Portion of which is adjusted to reflect the sharing by the Company and the District of the Refinancing gain related to the Series 2020 Bonds in accordance with the terms of the Concession Agreement, as agreed by the Company and the District); and (b) interest income, assuming an annual rate of return of 35 bps. Service Payments received by the Company, including the TABOR Portion, are to be deposited in the Revenue Account and applied to payments of various costs and expenses. Absent a failure by the District to include an RTD Appropriation Obligation in its adopted annual budget and to appropriate the required funds, Service Payments deposited in the Revenue Account will be applied to operation and maintenance costs prior to payment of debt service. See "ACCOUNTS AND FLOW OF FUNDS."
- (2) Company operating costs. Includes fees of the Trustee, the Account Bank and rating agencies.
- (3) Fixed price, pursuant to the O&M Contract. Includes operating costs and O&M Contractor's insurance premiums.

(4) As provided in the O&M Contract.

- (5) Availability of and withdrawals from reserves are not included. See "FINANCING FOR THE PROJECT" and "ACCOUNTS AND FLOW OF FUNDS.'
- Total Debt Service Coverage Ratio or Total DSCR means for any 12-month period ending on a Calculation Date the ratio of A divided (6)by B where: A = the Borrower's Free Cash Flow for such period; and B = the payment of all scheduled principal and interest on the Series 2020 Bonds during such period.

Concession Agreement and the Company Source:

For information regarding the results of operations, please see the most recently audited financial statements of the Company, which are incorporated by reference in this Official Statement and are considered to be part of this Official Statement. The Company can disclose important information by referring to documents included by reference. This Official Statement "incorporates by reference" information contained in the following document: FINANCIAL STATEMENTS DENVER TRANSIT PARTNERS, LLC for the year ended 12/31/2019 posted 04/30/2020. The Company files certain financial and other information with the MSRB, by and through EMMA, including information that it had agreed to file pursuant to its continuing disclosure undertaking in connection with the issuance of the Series 2010 Bonds. This information, including the most recently audited financial statements of the Company, may be accessed at https://emma.msrb.org.

The following chart sets forth the debt service coverage ratio with respect to the Series 2010 Bonds for the period from 2017 through 2020.

### Historical Debt Service Coverage<sup>(1)</sup>

(dollars in thousands)

	Revenues	Fees and Operating Expenses (3)	Operating Cash Flow (4)	Debt Service	Reserve Movements	DSCR (6) (C) / ((D) +
Year	(A)	(B)	(A) + (B) = (C)	(D)	(E)	(E))
2017	77,482	(45,004)	32,478	(23,577)	376	1.36x
2018	79,296	(44,320)	34,976	(23,577)	325	1.46x
2019	110,632	(64,082)	46,550	(28,177)	(689)	1.69x
2020*(7)	120,138	(74,931)	45,207	(32,939)	43	1.37x

\* Preliminary, subject to change.

- (1) Figures are provided by the Company based on historical financial information.
- (2) Revenues consist of the Service Payments (including the TABOR Portion), and interest income; the increase in revenues is as a result of additional rail lines coming online and into operations. Revenues do not include construction payments made by the District pursuant to the Concession Agreement during such period, which revenues were primarily used to pay for the costs of construction of the Project. These revenues are excluded for the purposes of calculating DSCR.
- (3) This figure includes Company costs, overhead, ongoing bond Trustee and rating fees, changes in working capital, O&M Expenditures, and Insurance and Renewal Works costs as per the O&M Contract.
- (4) Operating Cash Flow equals the Revenues less Fees and Operating Expenses.
- (5) Debt Service prior to the Series 2010 Refinancing represents debt service on the Series 2010 Bonds.
- (6) For the purposes of this table, the Debt Service Coverage Ratio or DSCR is calculated as Operating Cash Flow divided by the sum of Debt Service and Reserve Movements.
- (7) The 2020 figures are actual through September 30, 2020 and include pro-forma estimates through the end of the year. Pro-forma estimates of Revenues are per the calculations set forth in the Concession Agreement.

Source: The Company

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#### **RISK FACTORS**

THE PURCHASE OF THE SERIES 2020 BONDS IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE SERIES 2020 BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING ALL APPENDICES HERETO. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW, WHICH, AMONG OTHERS, COULD AFFECT THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THE SERIES 2020 BONDS AND WHICH COULD ALSO AFFECT THE MARKET PRICE OF THE SERIES 2020 BONDS TO AN EXTENT THAT CANNOT BE DETERMINED.

The following discussion is not meant to be an exhaustive list of the risks and other factors that should be considered in connection with the purchase of the Series 2020 Bonds and does not necessarily reflect the relative importance of the various risks and other factors. Any one or more the risks discussed, and others, could adversely affect the Company and/or the District and could lead to substantial decreases in the market value and/or the liquidity of the Series 2020 Bonds. There can be no assurance that other risk factors will not become material in the future.

#### Series 2020 Bonds are Special, Limited Obligations

The Series 2020 Bonds are special, limited obligations of the Issuer payable solely from payments received from the Company pursuant to the Loan Agreement. The only source of payment of the Series 2020 Bonds is the Trust Estate, including revenues provided by the Company to the Issuer pursuant to the Loan Agreement. The Series 2020 Bonds will not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State.

#### **Company is a Single Purpose Entity**

The Company was formed for the purpose of entering into the Concession Agreement and has no assets other than the Company's rights under the Material Project Contracts, including the Company's rights under the Concession Agreement to receive the Service Payments. Substantially all of the Company's responsibilities in connection with the Project are being passed through to the O&M Contractor, and substantially all of the Company's rights under the Company's rights under the Company's obligations in connection with the Project. No assurance can be given, however, that the funds available to the Trustee will be sufficient to make all of the payments to be paid from the Trust Estate, including payments to be made of principal of and interest on the Bonds.

### **Sales Tax Considerations**

A primary source of funding for the District to make Service Payments and Termination Payments under the Concession Agreement (and thus for the Company to pay operating expenses and debt service on the Bonds) will be derived from the RTD Sales Tax Revenues. Service Payments, for example, consist of (a) the TABOR Portion and, following delivery of an Additional TABOR Portion Notice, the Additional TABOR Portion and (b) the RTD Appropriation Obligations, and the District's ability to pay these obligations will depend in large part upon the amount of RTD Sales Tax Revenues available in each year. The amount of RTD Sales Tax Revenues available for these payments will depend in part upon factors such as economic conditions and political events such as limitations imposed by the voters or state legislature that could affect the RTD Sales Tax Revenues but that are not within the District's or the Company's control. No assurance can be given that the District will always have sufficient RTD Sales Tax Revenues (or other revenues) to pay all of its obligations secured by RTD Sales Tax Revenues, including its obligations under the Concession Agreement.

*Economic Conditions.* As noted in APPENDIX A—"The Regional Transportation District," collections of RTD Sales Tax Revenues are subject to the elastic nature of consumer spending and vary, sometimes substantially, with the level of retail activity in the District's service area. Sales Tax receipts may increase as prices and inflation

increase but decrease during adverse economic conditions and reduced consumer confidence and spending. Although Colorado employment rates and personal income levels generally exceeded those experienced on a national basis during the current downturn, retail sales in Colorado and in the Denver metropolitan area have experienced a significant decrease. RTD Sales Tax Revenue was down 5.3% for the first 8 months of 2020, as compared to the same period in 2019, with volatility in monthly collections as March was down 16.9% and April was down 13.2% compared to 2019. See "DISTRICT SALES TAX" and "DEBT STRUCTURE OF DISTRICT" in APPENDIX A and "PAYMENTS UNDER THE CONCESSION AGREEMENT." For information about COVID-19, please see "RISK FACTORS—Sales Tax Considerations—Potential Impact of COVID-19 and other Public Health Pandemics or Outbreaks" below.

RTD Sales Tax Revenues constituted more than 70 percent of the District's total revenues (excluding federal capital grant revenues) in each of the last three fiscal years, and significant decreases in the amount of available RTD Sales Tax Revenues in any year could have an adverse effect not only on the amount of revenues available to pay the TABOR Portions and any Additional TABOR Portion but also on the District's ability to have sufficient funds to pay RTD Appropriation Obligations, including the component of the Service Payments that constitutes an RTD Appropriation Obligation, and in turn on the Company's ability to make the payments required under the Loan Agreement to pay debt service on the Series 2020 Bonds.

**District Sales Tax is Subject to Change by the General Assembly and by the Voters.** The District is an entity created by Colorado statute, and its powers are susceptible to changes in statutes enacted by the General Assembly or initiated by the voters. In particular, because the State General Assembly requires the sales tax imposed by the District to be imposed upon the same transactions or incidents upon which the State imposes a sales tax, with certain exceptions the District is not able to prevent the State from enacting exemptions that would diminish the District's sales tax base. Although in 1983 the General Assembly increased the District's sales tax rate when it enacted new sales tax exemptions and on other occasions has created for the District's sales tax base. No assurance can be given that the General Assembly (or the voters) will protect, and not reduce, the District's sales tax base in the future. See APPENDIX A and "—Political Risk and Community Risk" below. Future sales tax exemptions or limitations could have a material and adverse impact on the District's ability to make the Service Payments and other payments under the Concession Agreement.

The TABOR Portions are Subject to the Claim of the District's Senior Debt; Potential Acceleration of 0.6% Senior Debt. The District's obligation to pay the TABOR Portion and any Additional TABOR Portion of the Service Payment is secured by a pledge of the District's 0.4% Sales Tax Revenues available after payment of the FasTracks Bonds and by a pledge of the District's 0.6% Sales Tax Revenues after payment of the 0.6% Senior Debt, Senior Financial Products Agreements, Senior Credit Facility Obligations and the FasTracks Bonds. As described under "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion—Additional Sales Tax Indebtedness Permitted under the Concession Agreement" and in APPENDIX C—"Summary of Certain Provisions of the Concession Agreement," the District may issue additional 0.6% Senior Debt to refund outstanding 0.6% Senior Debt and may enter into Senior Financial Products and Senior Credit Facility Obligations in connection with 0.6% Senior Debt.

Although the District's obligations under the FasTracks Bonds and to pay the TABOR Portions of the Service Payments are not subject to acceleration, the District's obligations under the 0.6% Senior Debt and under the Senior Financial Products and Senior Credit Facility Obligations may be accelerated and significant amounts could become payable earlier than scheduled following a default or following the occurrence of certain other events, not all of which are within the District's control. Depending upon market conditions, for example, the District could be required to make large termination payments under its existing Senior Financial Products at the time the Senior Financial Products expire or if they are terminated early. Separately, in the event the Senior RTD Debt Trustee declares the principal of the 0.6% Senior Bonds to be due and payable, all principal and accrued interest on the outstanding 0.6% Senior Bonds would have to be paid in full before any of the 0.6% Sales Tax Revenues would be available as a source of Sales Tax Revenue to pay the FasTracks Bonds and ultimately any of the TABOR Portion. See "DEBT STRUCTURE OF RTD" in APPENDIX A and "PAYMENTS UNDER THE CONCESSION AGREEMENT FOR THE BONDS—TABOR Portion."

The District may issue additional FasTracks Bonds, but only if the District demonstrates compliance with the "Additional Bonds Test" set forth in the Concession Agreement. The District may enter into new swaps and other new Senior Financial Products Agreements, but only if the District's obligation to make termination payments thereunder is subordinated to the District's obligations under the Concession Agreement. No assurance can be given, however, that even with these restrictions, available Sales Tax Revenues will always be sufficient to enable the District to make the payments required under the Concession Agreement. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion—Additional Sales Tax Indebtedness Permitted Under the Concession Agreement."

#### Potential Impact of COVID-19 and other Public Health Pandemics or Outbreaks

Public health pandemics or outbreaks could adversely impact the District's operations and finances. In December 2019, a novel strain of coronavirus (COVID-19) emerged in Wuhan, Hubei Province, China. While initially the outbreak was largely concentrated in China and caused significant disruptions to its economy, it has now been declared a pandemic by the World Health Organization and has spread to many other countries, including the United States. The extent to which the coronavirus impacts the District's operations and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak. Currently, the COVID-19 pandemic has dramatically altered the behavior of businesses and people in a manner that is having negative effects on global and local economies. These adverse impacts continue to evolve daily within the State and the District's service area. The extent to which a public health pandemic or outbreak other than the COVID-19 pandemic would impact the District's operations and its financial condition are highly uncertain and cannot be predicted with confidence, and could be impacted by the duration and other future developments of such public health pandemic or outbreak. Public health pandemics and outbreaks could alter the behavior of businesses and people in a manner that could have negative effects on global and local economies, including within the State and the District's service area. The District also relies on RTD Sales Tax Revenues to pay its debt. The COVID-19 pandemic has already had an adverse impact on the level of RTD Sales Tax Revenues, but the degree of future impact is extremely difficult to predict at this time. Any public health pandemic or outbreak other than the COVID-19 pandemic could also adversely impact the level of RTD Sales Tax Revenue in a degree that is extremely difficult to predict. The continued spread of the coronavirus in the United States could have a material adverse effect on the District's operations and its financial condition as could any public health pandemic or outbreak other than the COVID-19 pandemic.

For more information about the impact of COVID-19 and the response by the District, please see APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT—GENERAL INFORMATION—Certain Considerations Relating to COVID-19."

Although since the implementation of certain service reductions directed by the District, the O&M Contractor has not missed any trips due to COVID-19 related incidents and to date there have been minimal effects by COVID-19 on the O&M Contractor's staffing, the duration and other future developments of the COVID-19 global pandemic (or a public health pandemic or outbreak other than the COVID-19 global pandemic) may negatively impact the O&M Contractor work closely with suppliers, fabricators, and subcontractors to ensure that the Project is not affected by the COVID-19 global pandemic, the duration and other future developments of the COVID-19 global pandemic (or a public health pandemic or outbreak other than the COVID-19 global pandemic) may negatively impact and disrupt supply chains that could have a material adverse effect on the operation of the Project.

For more information about the impact of COVID-19 and the response by the Company, please see "THE PROJECT—Description of Project Elements—Impact of COVID-19 on the Project."

### **RTD** Appropriation Obligations

Under the Concession Agreement, all required Service Payments that are not TABOR Portions or Additional TABOR Portions constitute RTD Appropriation Obligations, and all Termination Payments and any portion of the TABOR Portion or Additional TABOR Portion that remain unpaid when due also constitute RTD Appropriation Obligations. The District's obligation to pay RTD Appropriation Obligations is subject to appropriation by the District of moneys for the purposes of the Concession Agreement. No RTD Appropriation Obligation that requires funding in any Fiscal Year is legally enforceable against the District without an appropriation for the relevant amount of funding in such Fiscal Year. See APPENDIX A.

If the District does not appropriate its RTD Appropriation Obligation by the beginning of a Fiscal Year, the Company may suspend service, but such an event of non-appropriation in connection with an RTD Appropriation Obligation would not constitute an RTD Termination Event unless and until the non-appropriation continues until the end of the District's Fiscal Year, at which time the Company would be entitled to terminate the Concession Agreement and to collect an RTD Default Amount for termination. Should the District not appropriate funds to pay the RTD Default Amount, however, the Company, and thus the Trustee, would not receive a lump sum payment but would have to wait and collect periodic TABOR payments representing the RTD Default Amount. In no instance may the Company require the District to appropriate any amounts. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" herein and Tables VI and VII in APPENDIX A.

Service Payments deposited in the Revenue Account are applied to various costs of the Project, including, without limitation, fees, administrative costs, overhead and other Company expenses, or equity, and operation and maintenance costs prior to payment of debt service. The Lockbox Account Agreement provides, however, that in the event the District fails to include an RTD Appropriation Obligation in its adopted annual budget, Service Payments deposited in the Revenue Account will be applied first to fees, administrative costs, overhead, transfers to the Rebate Fund and other Company expenses; and second to the payment of debt service on the Bonds prior to the payment of operating and maintenance costs. See "ACCOUNTS AND FLOW OF FUNDS."

### **TABOR Portion Will Not Be Accelerated**

Any unpaid TABOR Portion or Additional TABOR Portion would not be subject to acceleration upon termination of the Concession Agreement after an RTD Termination Event. Following an RTD Termination Event, the unpaid TABOR Portion, in the annual amounts set forth in the Concession Agreement, would be payable *pro rata* on a monthly basis on the fifth Business Day of each month. Any Additional TABOR Portion would be payable over time pursuant to the schedule set forth in the Additional TABOR Portion Notice. The TABOR Portion and any Additional TABOR Portion would continue to be payable over time unless and until the District refinances all or a portion of such payments and uses the proceeds of the refinancing to prepay them. The District has agreed in the Concession Agreement to use its best efforts to refinance the TABOR Portion and Additional TABOR Portion in such event, to the extent it is able to do so pursuant to State law, but no assurance can be given that the District will be able do so. The Trustee or the Company could be required to initiate court proceedings and to make separate claims for each payment, and substantial delays or nonpayment could result. See "CONSTITUTIONAL REVENUE, SPENDING AND DEBT LIMITATIONS" in APPENDIX A and "PROJECT AGREEMENTS— Concession Agreement."

### **Political Risk and Community Risk**

As described in APPENDIX A—"THE REGIONAL TRANSPORTATION DISTRICT", Colorado voters not only can approve the imposition of taxes and the incurrence of debt and expenditure of tax proceeds but also can attempt to limit such activities. Voters in Colorado have a long history of effecting limitations by initiative. New changes may be proposed or approved by the voters or by the General Assembly in the future. No assurance can be given that the District's sales taxes and agreements in connection with FasTracks, also approved by the voters, will be exempt from any new limitations. Making such determinations and clarifying the applicability of any new limitations likely will require interpretations by the courts, a process that could result in substantial delays and uncertainty.

Other Types of Political and Community Risk. As in any commercial arrangement, parties may disagree about the appropriate course of action to be taken, particularly if adverse events occur. The District and the Company have different priorities and interests and may have difficulty in resolving disputes should their interests diverge. See "LITIGATION—Pending Litigation." Similarly, the District and the Trustee, on behalf of the owners of the Series 2020 Bonds, may have very different interests and priorities following a default or other adverse event under the Concession Agreement, and no assurance can be given that the District will be willing or able to take into

account the interests of the owners of the Series 2020 Bonds if an event occurs that would entitle the District to terminate or to take other remedial action under the Concession Agreement.

Operation of the Project could have considerable local business and community impacts, such as noise, dust, vibrations and increased traffic congestion. There is also the possibility that local and necessary structures could be damaged during and as a result of operation of the Project. Addressing these impacts to the satisfaction of local residents and businesses could result in delays and/or in increased costs.

### **Pass-Through Risks**

The O&M Contract is designed to pass through, for fixed compensation, to the O&M Contractor, all of the Company's obligations and risks under the Concession Agreement with respect to the operation and maintenance of the Project. There can be no assurance, however, that in all cases all of such responsibilities and risks have been passed through or that events will not occur that would result in increases in the compensation payable to the O&M Contractor that are not reimbursed or otherwise provided for under the Concession Agreement. In addition, permitted reductions in payments by the District to the Company because of non-performance by the O&M Contractor may not be made up by reductions in Company payments to the O&M Contractor, and under some circumstances the reductions in payments by the District may exceed the amounts for which the O&M Contractor is responsible. In such event, if the Company cannot replace the O&M Contractor, the Company may not receive Service Payments in amounts sufficient to pay debt service on the Bonds or any payments at all.

#### **Environmental and Permitting Risks**

The Company may be adversely affected by environmental contamination that could require substantial expenditures. Hazardous material contamination is known to exist along the right-of-way for the Project (the "Project Site") and may be present in other nearby areas. Environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), impose liability on owners or operators for the clean-up costs associated with remediating contaminated property. Because the Company is the lease holder for the Project Site, the Company could become liable for certain claims for remediation of pre-existing contamination existing on or under the Project Site and related areas, whether such contamination is known or unknown, as well as future contamination associated with the Project.

The liability associated with contamination could have an adverse effect on the net revenues expected to be derived by the Company from the operation of the Project, thereby adversely affecting the ability of the Company to satisfy its obligations under the Loan Agreement and in turn, the payment of principal and interest on the Bonds.

*Changes in environmental laws may result in increased compliance costs.* The laws and regulations governing environmental protection have changed significantly over recent years and are expected to continue to change. Regulations governing, among other things, air pollution, noise abatement and control, wetlands mitigation, hazardous waste, solid waste, water quality and endangered species may become more stringent in the future, possibly requiring additional compliance and conceivably having a material and adverse effect on the operation of the Project. The Concession Agreement provides relief from adverse cost of certain Changes in Law. See "— Changes in Governing Laws" below and "Summary of Certain Provisions of the Concession Agreement—Changes in Law" in APPENDIX C and Sections 8 and 10 in APPENDIX J—"Technical Advisor Report."

The inability to obtain required permits or material changes in permitting requirements may adversely affect the Project. Governmental approvals ("Permits") of many kinds are required to be obtained and maintained for the operation of the Project. The issuance of and renewal of such Permits may include public notice and comment, hearings, or administrative or judicial appeals. Permits may be appealed if they have not been issued in compliance with law, and there are various remedies available to governmental agencies and to the public if the Project is operated without, or other than in compliance with, the Permits.

The District has obtained all of the Permits the Concession Agreement requires the District to acquire ("District Permits"), and the Company has obtained all of the other Permits (and Permit renewals or amendments) required for the Project. The O&M Contractor has obtained and is responsible for complying with Permits required

for operation of the Project. The obligation to obtain all required Permits extends to third-party consent or approvals arising under agreements between the District and other persons, including municipalities, railroads, and utilities.

Any material delay in renewing Permits or imposition of an unexpected material condition on a Permit could increase the costs of operation of the Project. The Company is eligible for cost relief for certain types of delays in obtaining Permits or for certain unexpected conditions, but the delays inherent in governmental processing of the Permits would not cover all risks relating to the Permits. Much of the risk of these additional costs is allocated to the O&M Contractor under the O&M Contract, which would limit the impact on the Company of such increased costs and delays. There are procedural and other limitations on the liability of the O&M Contractor under the O&M Contractor is not liable or does not pay for such costs, there may be an adverse effect on the Company's ability to pay the principal of and interest on the Bonds, including the Series 2020 Bonds.

### **Operating Risks**

The Concession Agreement includes numerous requirements that must be satisfied by the Company as a condition to the District's obligation to make Service Payments in the amounts required by the Company. As described under "PROJECT AGREEMENTS—The Concession Agreement" and in APPENDIX C, the Availability Factor, and thus the Service Payments, may be reduced for "STOP Points" assessed against the Company for failure to achieve specified levels of Availability (train and station availability and on-time performance) and may be reduced to offset any indemnity claims against the Company. The Concession Agreement provides that deductions due to the assessment of STOP Points and the Availability Factors are first to be applied to the portion of the Service Payments that constitutes an RTD Appropriation Obligation before being applied to the TABOR Portion of the Service Payment, but any reduction in Service Payments would reduce the amount available to pay O&M Expenditures and other expenses and to pay debt service on the Series 2020 Bonds. Although the O&M Contract has been structured so that any such deduction in the Service Payment payable to the Company would be mirrored by a similar reduction in the amount of compensation payable to the O&M Contract are perfectly matched or that if the O&M Contract is terminated, that another operator could be found that would agree to similar terms.

As with any infrastructure project of the size and complexity of the Project, operations could be affected by many factors, including breakdown or failure of equipment or processes, performance below expected levels of availability, failure to operate to design specifications and in accordance with then-applicable permit requirements, labor disputes, changes in law and catastrophic events of force majeure. Not all of these events are within the control of the O&M Contractor or the Company and not all can be insured against. The District has agreed to bear the risk of some, but not all, of these events under provisions of the Concession Agreement that require the District to pay Incurred Costs for certain events. The occurrence of any of such events could significantly increase O&M Expenditures, which are payable before debt service, and reduce or even eliminate Project Revenues.

Although the Concession Agreement and the O&M Contract are designed to protect the Company against certain of these risks, no assurance can be given that the Project can be operated at the performance levels required to pay principal and interest on the Series 2020 Bonds when due. The O&M Contract provides that the Company may terminate the O&M Contract if the Operator has paid certain claims that equal the limit of liability stated in the O&M Contract. If the O&M Contract is terminated, the Company may not be able to find a replacement operator willing or able to enter into a replacement agreement on terms that pass through operating risks to the same degree as the O&M Contract or that do so at a level of compensation substantially similar to that in the O&M Contract.

The Lockbox Account Agreement provides that the costs of operating and maintaining the Project are to be paid before debt service on the Bonds and before any required deposits to the Debt Service Reserve Account. As a result, significant increases in operating and maintenance costs over amounts currently projected by the Company could adversely affect the Company's ability to make payments under the Loan Agreement to pay principal and interest on the Bonds. See "PROJECTED DEBT SERVICE COVERAGE— Results of Operations and Projected Cash Flow and Debt Service Coverage for the Series 2020 Bonds During Operations."

### **Risk of Set-Off**

The Concession Agreement provides that, if the Company owes any amounts to the District, the District may set off such amounts against amounts payable by the District to the Company. As a result, it is possible that amounts owed by the Company to the District, including, without limitation, amounts owed in respect of the Company's obligation to indemnify the District against certain costs, claims and liabilities, could be set off against the amount of Service Payments the District is required to pay to the Company. Depending upon the amount of any such set-off, it is possible that the net amount payable as one or more Service Payments would be less than the applicable TABOR Portion and therefore would not be sufficient to pay debt service on the Bonds, including the Series 2020 Bonds.

## **Technology Risk**

In addition to meeting current requirements of the District and the Federal Railroad Administration (the "FRA"), the Company and the O&M Contractor must be able to respond if changes in federal, state or other requirements mandate changes in the Project's facilities or technology. It is not possible to predict the kind or cost of changes that could be mandated over the term of the Series 2020 Bonds, and as with the risks of changes in Permit requirements, no assurance can be given that the Company, the O&M Contractor and/or the District (to the extent the District's response is required) will always be able to respond.

### **Events of Force Majeure; Limited Insurance Coverage**

Operation of the Project is at risk from events of *force majeure*, such as severe weather, floods, earthquakes, fires and explosions, strikes or industrial action, sabotage, wars, embargos or trade sanctions, riots and hazardous materials contamination, among other events. Operations also may be stopped or delayed by non-casualty events such as discovery of archaeological artifacts, changes in law, executive orders and other official states of emergency at the local, state and federal level (including in response to public health concerns, such as novel strain of coronavirus (COVID-19)), delays in obtaining and renewing permits, revocation or revision of permit requirements and litigation, among other things.

Although the District, the O&M Contractor and the Company are required to provide insurance, the required policies do not cover damage and delay from all events that potentially could interrupt operation of the Project. Insurance policies may not be maintained or be obtainable in amounts that would be sufficient or be paid on time in all events to pay all of the costs required to be paid under the Concession Agreement and under the Indenture, including debt service on the Series 2020 Bonds. If certain events of *force majeure* occur during the Operating Period, the District will be required to continue to pay the Service Payment without deduction in respect of the effects of the *force majeure* event; however, such protection does not cover all events that potentially could interrupt operation of the Project.

Risks that may not be insurable include a nuclear event, war, terrorism, unforeseeable environmental or geological conditions, discovery of archeological artifacts, criminal or intentional acts by the insured, bankruptcy, loss of market, longshoremen's strikes, riot and civil commotion and insurer insolvency. In addition, changes in federal, state or local design, building and environmental requirements and other changes in law are not risks that are generally insurable. A number of the policies, including the O&M Contractor's liability policies, are blanket policies that cover other facilities as well as the Project, and no assurance can be given that sufficient coverage will be available, especially if more than one facility is damaged at the same time. In addition, there can be no assurance that any use by the O&M Contractor of its insurance proceeds would not be challenged by other creditors, that the Company could repair any damage if insurance proceeds were not available or that insurance proceeds could be used to pay debt service if damaged facilities cannot be repaired or restored.

For more information about the impact of COVID-19 and the response by the Company, please see "THE PROJECT—Description of Project Elements—Impact of COVID-19 on the Project."

### **Bankruptcy and Insolvency Risks**

The enforceability of the rights and remedies of the Owners of the Bonds, including the Series 2020 Bonds under the Indenture and of the Company under the Material Project Contracts, the enforceability of obligations of the Company, the Design Build Contractor, the District, the Design Build Guarantors, the O&M Guarantors, the O&M Contractor and the issuers or obligors under letters of credit and performance bonds and the enforceability of the liens, security interests and pledges created by the Indenture, the Security Documents, the Leasehold Mortgages and other documents may be subject to the United States Bankruptcy Code (the "Bankruptcy Code"), to other bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and equitable principals that may limit enforcement of certain remedies under Colorado law. Risks associated with a bankruptcy of the Company include the risks of delay in payment or of nonpayment under the Loan Agreement and the risk that the Trustee or the District, as lessor, may be unable for an extended time, or at all, to evict a bankrupt Company and to substitute a new concessionaire or tenant. Certain of these risks are risks that are incurred whenever one enters into a contract with an entity that could become a debtor under the Bankruptcy Code, while others are risks that result from the treatment under the Bankruptcy Code of unexpired leases or secured financings. Potential purchasers of the Series 2020 Bonds should consult their own attorneys and advisors in assessing the risks and the likelihood of recovery in the event the Company or any other party to a document described herein becomes a debtor in a bankruptcy case prior to the time the Bonds, including the Series 2020 Bonds, are paid in full.

**Company Bankruptcy Risk.** Most of the assets that comprise the Trust Estate are derived from the Concession Agreement. If the Company became the subject of federal bankruptcy proceedings, operation of the automatic stay provisions of the Bankruptcy Code under certain circumstances may require the District and the Trustee to obtain bankruptcy court approval prior to taking any action to enforce the Concession Agreement (or to enforce the Loan Agreement, the Security Agreement or any other agreement that creates a Security Interest for the benefit of the Trustee on behalf of the Owners of the Bonds), including declaring the Concession Agreement (or such other documents) to be in default, recovering amounts due but unpaid, terminating the Concession Agreement, accelerating the due dates of any payments due from the Company as security for its payment obligations under the Concession Agreement and the Loan Agreement or enforcing any other remedies provided for in the Concession Agreement or enforcing any other remedies provided for in the Concession Agreement and the Loan Agreement or enforcing any other remedies provided for in the Concession Agreement or in the other documents.

The District, the Design Build Contractor and the O&M Contractor each entered into a "Direct Agreement" with the Company and the Trustee for the benefit of the Owners of the Bonds, each designed to provide the Trustee with notice and time to take action following the occurrence of an event that would entitle a party to terminate or to suspend its agreement with the Company. The Lenders' Direct Agreement specifically provides that if the Concession Agreement is rejected or is terminated as a result of any bankruptcy proceeding involving the Company, the District will, at the request of the Trustee, execute a new concession and lease agreement on terms and conditions substantially similar to the Concession Agreement, either with the Trustee or with the Trustee's permitted designee or assignee, including a Qualified Substitute Concessionaire. The Direct Agreement also provides that the District will agree to perform all of the obligations to have been performed by the District under the Concession Agreement for the balance of the remaining term of the Concession Agreement before giving effect to such rejection AGREEMENT-Execution of New Concession Agreement." No assurance, however, can be given that the provisions of these Direct Agreements, including the Lenders' Direct Agreement, will always be enforced. Inability to enforce the provisions of the Lenders' Direct Agreement could adversely affect the continued obligation of the District to pay the TABOR Portion and thus, the continuation of the subordinate lien of the Owners of the Bonds on RTD Sales Tax Revenues to pay the TABOR Portion. A bankruptcy of the Company could result in long delays and possibly in large reductions in amounts payable to the Owners of the Bonds, including the Series 2020 Bonds.

In addition, payments made by a lessee within 90 days (up to 366 days if the lessor is found to be an insider) of a filing of a bankruptcy case could be deemed to be "avoidable preferences" under the Bankruptcy Code and thus could be subject to recapture by the Company or by its bankruptcy trustee.

**District Insolvency or Bankruptcy Risk.** Under current Colorado law, the District cannot file for bankruptcy protection under Chapter 9 of the Bankruptcy Code. There can be no assurance, however, that the Act or other Colorado law or the Bankruptcy Code will not be amended in the future to permit the District to file for

bankruptcy protection, and such a filing could, under certain circumstances, subject all or a portion of the RTD Sales Tax Revenues to the jurisdiction of the bankruptcy court.

*Other Parties.* The Design Build Contractor, the O&M Contractor, the Rolling Stock Supplier and their guarantors and sureties are involved or affiliates of companies that are involved, in many businesses and are entities that can become debtors under the Bankruptcy Code. If one of the contractors (or its guarantor) became a debtor under the Bankruptcy Code, the Company's or the Trustee's ability to substitute a new contractor, to obtain funds under the guarantees or to exercise other remedies may be delayed or not available at all. Substantial delays or losses could result.

### **Limitations on Enforceability**

Upon a default under the Concession Agreement, the Loan Agreement, the Indenture, any of the Material Project Contracts or any of the Security Documents, the remedies available under those agreements to the District, the Company, the Trustee and the Account Bank may depend upon judicial actions that may be subject to substantial discretion and delay. Some of these remedies may be limited and, in fact, may not be available readily or at all. The rights of the Owners of the Bonds, including the Series 2020 Bonds, and the enforceability of the Company's, the District's and the other parties' obligations will be subject to the exercise of judicial discretion under a variety of circumstances. The enforceability of governmental obligations is also subject to constitutional, statutory and public policy limitations and to other considerations that do not limit enforcement of obligations of private parties. The District makes a number of agreements, such as its agreement to make payments during operations, its agreements with the Company is terminated. These agreements and others are for the benefit of the Owners of the Bonds, but no assurances can be given that a court exercising its judicial discretion will always enforce them.

In connection with the issuance and delivery of the Series 2020 Bonds, counsel to the various parties will deliver opinions relating to, among other things, the validity and enforceability of the various agreements. The opinion of Bond Counsel as to the enforceability of the Indenture and the Series 2020 Bonds and the opinions of other parties' counsel with respect to the enforceability of certain other agreements will be qualified as to bankruptcy, insolvency and such other legal events.

### **Insufficient Collateral**

It may be difficult to realize the value of the Collateral pledged as part of the Trust Estate, and the proceeds received from a sale of such Collateral may be insufficient to repay the Bonds, including the Series 2020 Bonds. Foreclosure on such Collateral on the Owners' behalf may be subject to perfection and priority issues and to practical problems associated with the realization of the Owners' security interest in such Collateral. The enforcement of the security interest with respect to any such Collateral may not provide sufficient funds to repay all amounts due on the Bonds. Any such Collateral will be shared with the holders of other senior debt that the Company incurs concurrently with the issuance of the Series 2020 Bonds or in the future, which increases the risk that the proceeds of foreclosure on such Collateral will not be sufficient to repay the Bonds, including the Series 2020 Bonds. In addition, since the Company's principal asset is its rights under the Concession Agreement, any transfer of the Company's rights, including pursuant to a foreclosure, is subject to the prior approval of the District. Moreover, any transferee must meet certain requirements established by the Concession Agreement. Thus, as a practical matter, the Company's creditors (including the Owners of the Bonds) will have limitations on their ability to replace the Company as the concessionaire under the Concession Agreement.

#### **Continuing Compliance with Tax Covenants**

The Indenture, the Loan Agreement and the Company's and the District's tax certificates contain various covenants and agreements on the part of the Company and the District that are intended to establish and maintain the tax-exempt status of interest on the Series 2020A Bonds. A failure by the District or the Company to comply with such covenants and agreements, including their respective remediation obligations could, directly or indirectly, adversely affect the tax-exempt status of interest on the Series 2020A Bonds. Any loss of tax-exemption could

cause all of the interest received by Owners to be taxable. See "TAX MATTERS." Neither the District nor the Company is required to redeem the Series 2020A Bonds should interest be declared to be taxable.

### Judicial Challenge

The Project is to be financed and operated in accordance with the Concession Agreement and the other Material Project Contracts. Except as otherwise described herein, no proceedings are currently pending, however there is no assurance that any judicial or administrative actions or investigations challenging the issuance of the Series 2020 Bonds, the construction or financing of the Project or the operation of the Project or any of the other transactions contemplated by this Official Statement will not be filed or commenced in the future or, if they are filed or commenced, that they will not adversely affect the operation of the Project, or the ability of the District to pay principal and interest on the Series 2020 Bonds. See "LITIGATION—Pending Litigation."

## **Changes in Governing Laws**

Changes in the Laws related to the Project may impact the Company's ability to satisfy its payment obligations under the Loan Agreement, thereby negatively affecting the repayment of the Series 2020 Bonds. The Project and the related financing are subject to various Laws, policies and regulations, including, among others, Laws governing environmental protections and tax policies. The Project and the Company's business, financial condition and results of operations may be adversely affected by changes in such Laws, policies or regulations. To the extent that the Company and/or any other parties that are part of the Project require expenditures of additional funds not budgeted for in order to be in compliance with any new or amended policies, regulations or Laws, and assuming that no compensation or relief is provided pursuant to the terms and conditions of the Concession Agreement, such unanticipated expenditures could negatively impact the Company's cash flow and thus its ability to satisfy its payment obligations under the Loan Agreement.

## **Uncertainties of Forecasts and Assumptions**

The information in this Official Statement includes certain assumptions, forecasts and projections. Demonstration of compliance with certain of the covenants contained in the Indenture and in the Concession Agreement may also be based upon assumptions and projections. Such assumptions, forecasts and projections and any forecasts and projections that may be contained in any future certificate required under the Concession Agreement or the Loan Agreement or Indenture are not necessarily indicative of future performance, and actual results are likely to differ, perhaps materially, from those projected. None of the Company, the District, the Operator or any other party assumes any responsibility for the accuracy of such projections. In addition, certain assumptions with respect to future business and financing decisions are subject to change. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the Series 2020 Bonds are cautioned not to place undue reliance upon the projections contained in this Official Statement or upon requirements for future projections. If actual results are less favorable than the results projected or if the assumptions used in preparing the projections prove to be incorrect, the District's ability to make the payments required by the Concession Agreement and the Company's ability to make timely payment of the principal of and interest on the Series 2020 Bonds may be materially and adversely affected.

### **Ratings of Series 2020 Bonds**

Two credit rating agencies have assigned credit ratings to the Series 2020 Bonds. The ratings of the Series 2020 Bonds are not a recommendation to purchase, hold or sell the Series 2020 Bonds, and the ratings do not comment on the market price or suitability of the Series 2020 Bonds for a particular investor. The ratings of the Series 2020 Bonds may not remain for any given period or time and may be lowered or withdrawn depending on, among other things, each rating agency's assessment of the Company's financial strength.

### **Market Liquidity**

The Series 2020A Bonds and the Series 2020B Bonds each constitute a new issue with no established trading market. Although the Underwriters have informed the District and the Company that the Underwriters currently intend to make a market for the Series 2020 Bonds, the Underwriters are not obligated to do so, and they may discontinue any such market-making at any time without prior notice. No assurance can be given as to the development or liquidity of any market for the Series 2020 Bonds. If an active public market does not develop, the market price and liquidity of the Series 2020 Bonds may be adversely affected.

#### Limitation of the Premium Portion of the Redemption Price

Pursuant to Section 32-9-137(1) of the Act, in the event of an extraordinary mandatory redemption due to a payment of Termination Compensation, any unamortized premium or make-whole amounts that would otherwise be included in the redemption price of the applicable Bonds in excess of the seven percent (7%) Colorado statutory limit will not be included in the redemption price of such Bonds. No assurance can be given that Owners of the Bonds will receive the full redemption price in accordance with the terms of the Bonds requires premium or make-whole amounts in excess of the Colorado statutory limit. Similarly, pursuant to Section 32-9-137(1) of the Act, in the event of an optional redemption of the Series 2020B Bonds, any unamortized premium or make-whole amounts that would otherwise be included in the redemption price of the applicable Bonds in excess of the seven percent (7%) Colorado statutory limit will not be included in the redemption price of the seven percent (7%) Colorado statutory limit will not be included in the redemption price of such Bonds. However, pursuant to the terms of the Indenture, the Company cannot optionally redeem the Series 2020B Bonds if the redemption price of such Series 2020B Bonds as calculated is greater than the sum of one hundred-seven percent (107%) of the principal amount of such Series 2020B Bonds to be redeemed plus accrued interest to the redemption date.

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#### **PRINCIPAL PROJECT AGREEMENTS**

### **Concession Agreement**

*General.* Service Payments made under the Concession Agreement will be the primary source of repayment of the Bonds. The District intends to finance the Service Payments with collections of the RTD Sales Tax Revenues and other funds of the District. The obligations of the District and the Company under the Concession Agreement are set forth below.

**Rights and Obligations of the Company; Concession and Lease.** The Company has agreed to (a) design and construct the Commuter Rail Projects and the Commuter Rail Maintenance Facility; (b) design, procure and install the DUS Systems; (c) design and procure the Rolling Stock; (d) provide the Commuter Rail Services and operate and maintain the Commuter Rail Network and the Rolling Stock; and (e) commencing in May 2014, dispatch the Heavy Rail Movements, as each of those terms are defined in the Concession Agreement.

The District has leased to the Company, for the purpose of providing the Company the access necessary to construct, operate and maintain the Commuter Rail Network: (a) all Sites; (b) all other parts of the Commuter Rail Network (excluding the DUS Rail Segment); and (c) the Rolling Stock, in each case, upon the terms, covenants and conditions of, the Concession Agreement and the other Project Agreements.

The District has also granted to the Company a license to use and occupy all parts of the DUS Rail Segment Site and the DUS Rail Segment and to use the DUS Systems, for the purpose of operating and maintaining DUS Rail Segment, upon the terms, covenants and conditions of the Concession Agreement.

The District has agreed that the Company shall peaceably and quietly have, hold and enjoy all parts of the Commuter Rail Network and the Rolling Stock, subject to certain qualifications.

*Term of the Concession and Lease Period.* All provisions of the Concession Agreement are currently effective. The Lease Period is also effective and will end on the date of expiration or early termination of the Concession Agreement, provided that, with respect only to the Rolling Stock, if the Concession Agreement is terminated early, the Lease Period will not end until the District has fully paid the Applicable Termination Amount or on December 31, 2044, whichever occurs earlier.

### **Provisions Relating to Financing of Company's Obligations**

<u>Security</u>. For the operation and maintenance of the Concessionaire-operated Components, the Company may, with the prior written consent of the District, assign and/or create security over its rights and interests in and under the Concession Agreement (including a leasehold mortgage over the lease granted by the District to the Company), any other Project Agreement, its property, its revenues, its bank accounts, the Intellectual Property Rights (to the extent it is lawfully able to do so under any Applicable Requirement) or any other rights and assets for the benefit of the Lenders, including Owners of the Bonds.

Amendments to Financial Model and Designated Credit Agreements. The District has the right to approve any and all amendments or modifications of any Designated Credit Agreement that are not consistent in all material respects with the Financial Model. An amendment or other variation of a Designated Credit Agreement, or a waiver of any provision of a Designated Credit Agreement, and certain other actions may also constitute a "Refinancing" under the Concession Agreement and, with the exception of certain transactions, will entitle the District to share in any gain resulting from such Refinancing. The Company will not implement any Refinancing that will give rise to a refinancing gain greater than zero without the written consent of the District (such consent not to be unreasonably withheld or delayed), subject to certain Refinancings that are exempt from this consent. The District may elect to receive its share of the refinancing gain in the form of a lump sum payment (to the extent the Company receives a lump sum payment), a reduction in the Service Payments over the remaining term of the Concession Agreement or a combination of the two. Any adjustment to the Financial Model (other than adjustments which are necessary under certain provisions of the Concession Agreement, such as provisions governing Refinancing or adjustments to Service Payments) is also subject to the District's prior consent.

<u>Cooperation on Future Financing</u>. If so requested by the Company, the District shall use Reasonable Efforts to assist the Company in obtaining federal credit assistance in the form of allocations by the United States Department of Transportation for private activity bonds and/or similar assistance under any other Federal program, but not including loans under the Transportation Infrastructure Finance and Innovation Act or the Railroad Rehabilitation and Infrastructure Financing Program. The District shall, promptly upon the request of the Company or any Lender, execute, acknowledge and deliver to the Company, or any of the Persons specified by the Company, standard consents and estoppel certificates with respect to the Concession Agreement.

#### **Environmental and Regulatory Matters**

<u>General</u>. The Concession Agreement requires the Company to comply with all environmental obligations associated with the Project, including, but not limited to, permitting requirements, environmental impact mitigation requirements and responsibility for site contamination. The Company must also abide by the mitigation measures established in the NEPA review and with the hazardous material procedures as approved by the Colorado Department of Public Health and Environment.

<u>Permitting</u>. The Company and the District shared the responsibility for obtaining permits for construction of the Project. The permits required for construction of the Project have already been obtained. The O&M Contractor has obtained and is responsible for complying with permits required for operation of the Project.

<u>Mitigation of Environmental Impacts on the Project</u>. The Concession Agreement allocates to the Company the responsibility of managing the environmental impacts of the Project. The Company must take steps to limit impacts on protected species, such as the black-tailed prairie dog or burrowing owl, and to develop an integrated noxious weed management plan to limit the spread of these plants. Other mitigation required to be performed by the Company include the implementation of hazardous material management measures, including a materials, health and safety plan, and an asbestos and lead-based paint survey.

### **Ownership of Concessionaire-operated Components**

Upon the incorporation into the Commuter Rail Network of each part of the Commuter Rail Network (excluding the Sites and the DUS Infrastructure) and completion of all design and construction work related to such part, ownership of and title to such part of the Commuter Rail Network was immediately and automatically vested in the District free from all encumbrances. Ownership of and title to each part of the Rolling Stock vested in the District free from all encumbrances upon delivery of the elements of the Rolling Stock to each Site or to any other location designated by the District.

### **Operation and Maintenance**

<u>Operating Period</u>. The Company will operate the Commuter Rail Services and operate and maintain the Concessionaire-operated Components throughout the Operating Period in compliance with the specified requirements set forth in the Concession Agreement.

<u>Maintenance and Repairs</u>. The Company will at all times maintain, keep in good operating repair and condition and renew, replace and upgrade to the extent reasonably necessary, the Concessionaire-operated Components and any part thereof. The Company shall carry out all maintenance and repairs to the Concessionaire-operated Components at the Company's own cost and in accordance with the applicable standards and in a manner that causes the minimum amount of disruption to the operation of the Concessionaire-operated Components, to the District and to the counterparties to the District's Third Party Agreements. The Concessionaire-operated Components should, upon expiration, have the residual life specified in the Concession Agreement.

<u>District Intervention</u>. In certain circumstances, the District may immediately intervene in the operation and maintenance of the Concessionaire-operated Components and take such reasonable action as it considers necessary,

including issuing directions to the O&M Contractor, in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, security or the Environment or otherwise to ensure the safety of the passengers. The District may for this purpose enter into any part of the Concessionaire-operated Components or the Site, for such period as is necessary and take over all or any part of the operation and maintenance of the Concessionaire-operated Components.

<u>Electrical Energy</u>. The Company shall ensure the connection of the Commuter Rail Network to the power network in accordance with the applicable requirements and shall ensure the supply of any electrical power required for the operations and maintenance of the Commuter Rail Network and the Rolling Stock. The Company shall pay for all electrical power used for operations and maintenance of the Commuter Rail Network (except with respect to traction power, for which the District will be largely responsible, subject to certain cost-sharing and efficiency incentive arrangements).

<u>Collection and Determination of Fares</u>. The District was responsible for the initial supply, installation and testing of the fare system equipment and is primarily responsible for the ongoing operation and maintenance of the fare system equipment and collection of all fares. The District will determine in its sole discretion the level and structure of fares, ticketing and all other aspects of generating fare revenue. The District shall have all rights, title and interest in all fare revenue collected with respect of the use of the Commuter Rail Network and all rights relating to advertising on the Concessionaire-operated Components.

### Service Payments

<u>Calculation of Service Payments</u>. The Company shall be entitled to payment of the Service Payment for the applicable Commuter Rail Service on a calendar monthly basis calculated based on a fixed base monthly amount for each of the Commuter Rail Services, adjusted for the Availability Factor and Performance Deductions, among other adjustments. A portion of the Service Payments is indexed to a blended inflation rate tied to the CPI, labor and materials indices. The Availability Factor is based on the Availability Ratio which, in turn, is comprised of the Rolling Stock Availability, the On Time Availability and the Station Availability for the applicable month, which, for the purpose of determining the Service Payment amount, will be calculated on a system-wide basis. The District shall make the Service Payments based on the Company's invoices. The District's obligation to make the Service Payment is divided into the TABOR Portion and the RTD Appropriation Obligation. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" and "PAYMENTS UNDER THE CONCESSION AGREEMENT—RTD Appropriation Obligations" for the description of the TABOR Portion and the RTD Appropriation obligation portions of the Service Payments.

The Company's Right and Obligation to Suspend Service. Subject to certain conditions, if the District reasonably anticipates that the RTD board of directors (the "Board") will not include any RTD Appropriation Obligations that are payable or expected to be payable during the following Fiscal Year in the District's annual budget for such Fiscal Year, the Company shall suspend or partially suspend operation of the Concessionaireoperated Components from the date of such notice to the extent and in the manner directed by the District. If the Board fails to include any RTD Appropriation Obligations that are payable or expected to be payable pursuant to the Concession Agreement for the following Fiscal Year in its annual budget for such Fiscal Year, the Company shall suspend or may partially suspend operation of the Concessionaire-operated Components on January 1 of the Fiscal Year for which adequate funds to meet such RTD Appropriation Obligations have not been included in such annual budget. Each suspension described in this paragraph shall be treated as an RTD Proposed Change. During any period of suspension or partial suspension, the Company may continue to submit Invoices to the District with respect to the TABOR Portion up to a maximum amount equal to the Service Payment that would have been payable in the absence of such suspension (minus certain avoidable costs which are not being incurred by the Company during such period of suspension) and, in the event of a partial suspension only, any other portion of the Service Payment that remains payable and for which the Board has included funds in the District's annual budget for such Fiscal Year.

<u>Rolling Stock Replacement</u>. The Company will be obligated to undertake certain actions and otherwise use its Reasonable Efforts, as requested by the District, to assist the District in procuring the replacement Rolling Stock for use by the District on the Project following the Expiry Date.

<u>Company Indemnity</u>. The Company will fully indemnify and hold harmless the District and the District's agents, servants, consultants and employees and, to the extent required by the Project Agreements, the Project Third Parties and their respective agents, servants, consultants and employees from and against all Losses and/or Claims (excluding any Losses of, or Claims for, lost revenue to the District resulting from a failure to collect passenger fares) arising out of or in connection with any act or omission of the Company or its agents, servants, consultants or employees in connection with the Concession Agreement and the other Project Agreements or breach thereof or any willful misconduct of the Company or its agents, servants, consultants or employees. The Company will not be liable to indemnify the District or the Project Third Parties or their agents, servants, consultants or employees for any Losses and/or Claims, to the extent that they have been fully and effectively indemnified by the proceeds of insurance carried under the Concession Agreement or otherwise in accordance with the terms of any Third Party Agreement or other agreement between the Company and, as the case may be, the relevant Project Third Party or any of its agents, servants, consultants or employees.

### Changes

<u>Company Proposed Changes</u>. The Company shall have the right to suggest a change to the O&M Specifications, the procedures relating to the Handover and Reinstatement Work Requirements and certain other matters. The Company-proposed changes are subject to consent by the District at its discretion.

RTD Proposed Changes. At any time the District wishes to implement any type of a change or alteration specified in the Concession Agreement, the District shall be entitled to submit a written request in respect of such change or alteration to the Company at the District's own cost, which request shall specify whether the District shall, or reserves the right to, require the Company to seek funding for such change. The Company shall respond to the District indicating whether it has any objection to carrying out the proposed change, its estimated "not to exceed" cost of such change, such change's expected impact on operation and maintenance activities, which have been passed down to the O&M Contractor, and any other relevant information. If the District chooses to proceed with the proposed change, the Company shall prepare a more comprehensive report, which will include the full details of the proposed change implementation and its additional costs (to be paid by adjustment to the Service Payments) and anticipated impact on operation and maintenance activities. If the District agrees with the Company's analysis and directs the Company to implement the change, the Company will be entitled to claim the Relief Event and be paid the stipulated compensation. If the District disagrees with the Company's analysis, it can direct a third party contractor to implement the change, subject to certain conditions. In addition, the District may request that the Company use its Reasonable Efforts to seek financing for the change from the Company's Lenders or other third party funders. If the Company is unable to secure such financing, the Company shall be obligated to implement the change only to the extent the District has provided funding for such change.

<u>Change in Law</u>. Any Change in Law will entitle the Company to claim a Relief Event, and to receive from the District the reimbursement for the Incurred Costs resulting from such Change in Law (subject to certain deductions, unless the Change in Law constituted a Discriminatory Change in Law). The payment by the District of the Incurred Costs will be made by adjustment to the Service Payments. The District may elect to require the Company to provide funding for any Change in Law Change. If the District makes such election, the Company shall request from the Lenders, including Owners of the Bonds, or other third party funders or financial institutions the provision of funds to finance the changes required by any Change in Law Change. The District has agreed the Lenders, including Owners of the Bonds, may refuse the provision of any such funding in their sole discretion and that the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for implementing any Change in Law Change.

### **Relief Events**

<u>Relief for Relief Events</u>. The Company will be entitled to relief and compensation for certain costs incurred as a result of a Relief Event. The Company shall not suffer any impact to the Availability Ratio or accrue any Performance Deductions as a result of the Relief Event where the events giving rise to the Relief Event would, absent such Relief Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue. The Company shall be entitled to claim, and be paid by the District, the Incurred Costs actually incurred by it as a result of the impact of such Relief Event on the Company's performance of the Concession Agreement,

and any additional work it is required to carry out as a result of the applicable Relief Events. There is a separate relief mechanism for relief in connection with a Change or Work Order.

Adjustments to the Service Payment. Following the occurrence of any Relief Event that results in the Company incurring additional capital expenditure or funding, an adjustment to the Service Payment for such Commuter Rail Service will be made in order to restore the respective economic position of the Parties as set out in the Financial Model immediately prior to such occurrence or payment, as the case may be, and, in the case of a Change, to ensure that the Company suffers no reduction in revenue or net income as a result of carrying out such Change. Any Incurred Costs payable by the District shall be paid by the District by direct lump sum payment or by an adjustment to the Service Payments as soon as possible following the occurrence of the Relief Event; provided that the amount and timing of such adjustment shall be determined by reference to the Financial Model so as to maintain the debt service coverage ratios (and/or other financial ratios) required to be maintained under the Designated Credit Agreements. The District may elect to require the Company to provide funding for any Incurred Costs payable by the District. If the District makes such election, the Company shall request from the Lenders or other third party funders or financial institutions the provision of funds to finance such Incurred Costs. The District has agreed that the Lenders may refuse the provision of any such funding in their sole discretion and that the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for any such Incurred Costs. The Company shall use its Reasonable Efforts to comply with any conditions to funding placed by the Lenders (which includes Owners of the Bonds), including requesting equity support from the Shareholder, it being understood that the Shareholders may refuse the provision of any such funding in their sole discretion and that in such a case the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for any such Incurred Costs. If the Lenders or the Shareholders refuse to provide any funding for the implementation of any such Incurred Costs, the District shall provide funding for the implementation of such Incurred Costs or otherwise adjust the manner described above.

Force Majeure Events. Force Majeure Events generally include events outside the reasonable control of the Affected Party, and which were not reasonably foreseeable by the Affected Party as of the date of the Concession Agreement, where such events materially and unavoidably prevent or delay the Affected Party from performing any of its obligations under the Concession Agreement. None of the parties will be liable for any failure to comply, or delay in complying, with any obligation under or pursuant to the Concession Agreement to the extent that such failure or delay is caused directly by a Force Majeure Event, provided that no such relief may be claimed in respect of any obligation to pay any amounts that may from time to time become owing thereunder. The District shall continue to pay the Service Payment without deduction in respect of the effects of the Force Majeure Event, and the Company shall not suffer any impact to the Availability Ratio or accrue any Performance Deductions as a result of the Force Majeure Event, where the events giving rise to the Force Majeure Event would, absent a Force Majeure Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue.

#### Termination of the Concession Agreement

<u>Concessionaire Termination Events</u>. The Concessionaire Termination Events include the following, among others:

(a) certain bankruptcy-type proceedings involving the Company, the Shareholders or the O&M Contractor;

(b) the operation of the Concessionaire-operated Components by the Company in a manner violating applicable Law or the Concession Agreement and endangering the safety of passengers following a written notice from the District outlining such safety concerns;

(c) any failure by the Company to obtain and maintain sufficient committed funding for the Eagle P3 Project in the event there are any material cost overruns for which the Company is required to secure funding which failure to obtain and maintain sufficient committed funding would, with the passage of time, reasonably be expected to result in a separate Concessionaire Termination Event, which failure has not been remedied by the Company within a period of 90 days following its occurrence;

(d) the O&M Contract is terminated during the Operating Period and the Company has not entered into a replacement O&M Contract with a reputable counterparty reasonably acceptable to the District within 90 days following the date of termination of the O&M Contract;

(e) the Company fails to comply in any material respect with specified provisions of the Concession Agreement;

(f) any of the Project Agreements other than the Concession Agreement:

(i) ceases to be in full force and effect or no longer constitutes the valid, binding and enforceable obligations of the Parties thereto other than the District (other than due to the termination of such Project Agreement, or an involuntary bankruptcy event or a voluntary bankruptcy event, in each case as defined in such Project Agreement); or

(ii) is materially amended, varied or departed from (other than in accordance with the Concession Agreement),

and this materially adversely affects the ability of the Company to perform its obligations under the Concession Agreement, or any right of the District under the Concession Agreement or its ability to enforce any such right, or to perform its obligations under the Concession Agreement;

(g) the Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Rail Electrified Segment Service as a single Commuter Rail Service) is less than 85% in six or more months of any eight-month period (provided in each case that a single, continuous event lasting no more than 30 days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80% or 85%, as applicable, shall be deemed to have resulted in an Availability Ratio less than 80% or 85%, as applicable, in the first such month only);

(h) the Performance Deduction Percentage exceeds 3% of the Adjustable Base Service Payment for the relevant month in six or more months of any eight-month period; and

(i) any breach of any other material obligations of the Company under the Concession Agreement (but only to the extent such breach (i) is not the subject of Performance Deductions, (ii) has not resulted in any impact on the Availability Ratio and (iii) is not otherwise the subject of penalties or deductions under the Concession Agreement) or any written repudiation of the Concession Agreement by the Company.

<u>Consequences of a Concessionaire Termination Event</u>. Subject to the terms of the Lenders' Direct Agreement and the applicable cure periods, upon the occurrence of a Concessionaire Termination Event and so long as such event is continuing, the District may (a) in the case of certain Concessionaire Termination Events, serve notice of default on the Company and require the Company to (i) remedy the breach specified in such notice of default within a certain specified time period or (ii) propose within twenty (20) days following such notice of a default a reasonably detailed remedial plan, or (b) in the case of certain other Concessionaire Termination Events, terminate the Concession Agreement with immediate effect (among other available remedies).

<u>RTD Termination Events</u>. The RTD Termination Events include the following:

(a) other than as a result of any failure to appropriate (by inclusion in its annual or any interim budget) moneys for the purposes of the RTD Appropriation Obligations, the District fails to pay any undisputed amount within 10 days after the due date;

(b) the Board fails, by the end of a Fiscal Year, to make an appropriation (by inclusion in its annual or any interim budget) of moneys for the purposes of the RTD Appropriation Obligations (other than any Applicable Termination Amount) pursuant to the Concession Agreement in an amount sufficient to fund the RTD Appropriation Obligations (other than any Applicable Termination Amount) estimated to fall due, or that have fallen due, during such Fiscal Year; (c) a Discriminatory Change in Law or a Change in Law, but only where the District is not providing compensation to the Company to compensate it for the effects of the Discriminatory Change in Law or Change in Law, as required by the terms of the Concession Agreement; and

(d) the obligations of the District under the Concession Agreement are or become illegal, unenforceable, void or voidable, and as a result, the District is or becomes unable to perform its material obligations under the Concession Agreement.

<u>Consequences of an RTD Termination Event</u>. Subject to specified cure periods, upon the occurrence of an RTD Termination Event, the Company may terminate the Concession Agreement in its entirety.

<u>Termination for Extensive Force Majeure</u>. Either party has the right to terminate the Concession Agreement in the case of an Extensive Force Majeure by a 7-day notice to the other party.

<u>Compensation Following Termination</u>. See APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT—Applicable Termination Amount" for the description of various amounts which will be due and payable by the District in the case of an early termination of the Concession Agreement. Any Applicable Termination Amount shall be due and payable by the District 60 days after the Termination Date. To the extent not paid by the District 60 days after the Termination Date, on each anniversary of the Termination Date, certain components of the Applicable Termination Amount shall be re-calculated, while other components shall accrue interest at specified rates. No default interest shall accrue on any RTD Default Amount, Concessionaire Default Amount or FM Termination Amount other than with respect to certain components as determined and set forth in the Concession Agreement.

<u>Financing of the Applicable Termination Amount</u>. Unless the Applicable Termination Amount is paid by the District in full 60 days after the Termination Date, from the Termination Date and until the Expiry Date, the District shall pay to the Company in respect of the Applicable Termination Amount the TABOR Portion in accordance with the Trustee's Instructions during the applicable calendar year for which TABOR Portion amounts are set forth in the Concession Agreement, pro rata on a monthly basis during such calendar year on the fifth Business Day of each month during such calendar year in an aggregate amount (together with any Additional TABOR Portion amounts or other amounts paid by the District to the Company in respect of the Applicable Termination Amount) not to exceed the Applicable Termination Amount. Following the Expiry Date (if the District has not paid the Applicable Termination Amount in full to the Company) and only until the District has paid the Applicable Termination Amount in full to the Company, the payment of such Applicable Termination Amount shall continue to pay to the Company that portion of the Applicable Termination Amount which on the Expiry Date was secured as the TABOR Portion and any Additional TABOR Portion. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" and "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" of the Actional TABOR Portion.

Handover and Reinstatement Work Requirements on the Expiry Date. The Company shall, on the Expiry Date, hand over and, to the extent not already owned by the District, transfer ownership of title to the Concessionaire-operated Components free of all Encumbrances and free of charge to the District in a condition which could reasonably be expected of an equivalent commuter rail system which has been in existence and operated for a period equal to the period during which the relevant Commuter Rail Project has been operated and which has been maintained in accordance with the O&M Standards during that period and is capable of complying with the O&M Standards (as amended pursuant to the terms of the Concession Agreement) for a period of (i) with respect to the Commuter Rail Network, not less than three years and (ii) with respect to the Rolling Stock, not less than one year, in each case, from the Expiry Date.

<u>Dispute Resolution</u>. Generally, the disputes between the parties under the Concession Agreement will be resolved first, by mediation, by the Dispute Resolution Panel, and, finally, by either litigation in the District Court of Colorado (for disputes involving amounts equal to or in excess of U.S. \$25,000,000) or binding arbitration (for disputes involving lesser amounts).

#### **Design Build Contract**

*Guaranties.* Fluor Corporation and Balfour Beatty, LLC (collectively, the "Design Build Guarantors") have provided a guaranty in favor of the Company, which guarantees full payment and performance of all obligations owed to the Company under the Design Build Contract in the event the Design Build Contractor fails to perform. The obligations of the Design Build Guarantors are joint and several. In addition, Balfour Beatty plc guarantees the payment obligations of Balfour Beatty, LLC pursuant to a Deed of Financial Guarantee, dated as of July 9, 2010, in favor of the Company.

**Performance Security.** As security for the obligations of the Design Build Contractor under the Design Build Contract, the Design Build Contractor provided the Company with a warranty bond equal to 10% of the contract sum until the later of September 30, 2020 or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020, as described in further detail below.

*Warranties.* The Design Build Contractor warrants and guarantees to the Company and the District, during the warranty periods specified in the Design Build Contract for each of the Commuter Rail Projects, that the completed design and construction work is free of defects (including latent defects) and deficiencies in design, materials, equipment and workmanship, the Rolling Stock is good quality and conforms to the Applicable Requirements, the Applicable Standards and the Project Requirements free of defects in material, equipment and workmanship, and the final as-built drawings and documentation are accurate and complete and comply with applicable Contract Documents and accurately reflect the condition of each Commuter Rail Project as of the applicable Final Completion Date.

The remaining performance obligations of the Design Build Contractor under the Design Build Contract include its warranty obligations, which terminate on the later to occur of September 30, 2020, or one year from the date of any warranty claims in the case of any repairs or replacements made prior to September 30, 2020. As of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021. See also "THE PROJECT—Implementation of the Project—Completion."

#### **O&M** Contract

The Company and O&M Contractor have entered into the O&M Contract, pursuant to which substantially all of the operation, maintenance and renewal works relating to the Project are being undertaken by the O&M Contractor.

*Scope of Services.* Other than certain limited excluded services, the O&M Contractor will perform or cause to be performed any and all services required or appropriate in connection with the operations and maintenance of the Project, and will provide all materials, equipment, software, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to perform such services (collectively, the "Services"). The operating term will expire on December 31, 2044, unless the O&M Contract is terminated earlier in accordance with its terms.

**Back to Back Provisions.** Except as otherwise expressly provided in the O&M Contract, the O&M Contractor will assume and comply with all obligations and liabilities set forth in the Concession Agreement to the extent that they relate to the Services on a back-to-back basis (other than those that the Company is prohibited by the Concession Agreement from delegating to the O&M Contractor), and such obligations and liabilities are deemed to be included as part of the O&M Contractor's obligations under the O&M Contract.

**Performance Standards.** The O&M Contractor will perform and cause its subcontractors to perform the Services in accordance with (a) the Concession Agreement and the Third Party Agreement, (b) the requirements of all applicable laws and permits, (c) the final Project design, the operating and maintenance specifications in the Concession Agreement, environmental requirements and health, safety and security requirements, (d) an operating

plan and all other plans and procedures required to be prepared and/or complied with by the Company in accordance with the operating and maintenance specifications in the Concession Agreement, (e) the "Small Business Enterprises" program requirements in the Concession Agreement, and (f) Good Industry Practice. In addition, the O&M Contractor will operate and maintain the Project in a manner reasonably calculated (i) to minimize Performance Deductions and Service Task Orders, (ii) to maximize the Availability Ratio, and (iii) to minimize, consistent with the preceding clauses (i) and (ii), the costs and expenditures required to operate and maintain the Project.

**Project Sites.** The O&M Contractor will be solely responsible for the project sites pertaining to each Commuter Rail Project and the ongoing maintenance thereof. The O&M Contractor accepts the project sites (including the geotechnical, climatic, hydrological, ecological, environmental and general conditions of the sites, the nature of the ground and subsoil, the form and nature of such sites, the risk of injury or damage to property near to or affecting each such site and to occupiers of such property, Utilities and other structures on or near the sites) on an "as is, where is" basis, and the O&M Contractor will not be excused from the performance of the Services, and will not be entitled to additional compensation, for any reason relating to the condition of the sites except as otherwise provided as a Relief Event under the O&M Contract.

**O&M Contractor-Caused Hazardous Materials.** The O&M Contractor will be responsible for both the cost and implementation of all clean-up, remediation, removal, disposal and mitigation of Hazardous Materials in, on or under the project sites which is caused by or attributable to any acts or omissions of the O&M Contractor or any of its subcontractors in accordance with the requirements of the O&M Contract and the Concession Agreement. During the period of any clean-up or mitigation activities, the O&M Contractor will continue the Services to the maximum extent possible on unaffected parts of the Project and areas of the project sites.

**Review and Monitoring; Remedial Action Plan.** If, during the operating period (a) the Availability Ratio of any Commuter Rail Service is less than an average of 95% for four or more months of any rolling six-month period, (b) the Performance Deduction Percentage exceeds an average of 2.0% of the Adjustable Base Service Payment for four or more months of any rolling six-month period, or (c) a Persistent Condition exists, then in each such case, the O&M Contractor, at the Company's request, will be required to meet with the Company to review the O&M Contractor's operational procedures for the Project and to consider in good faith any recommendations made by the Company for changes to the operations and maintenance of the Project that the Company believes would be expected to enhance reliability or improve operation of the Project. If, during the operating period (a) the Availability Ratio of any Commuter Rail Service is less than an average of 90% for four or more months of any rolling six-month period, then in each case, the Company may require the O&M Contractor to submit a reasonable remedial plan to the Company, which remedial plan must be approved by the Company and the Technical Advisor. Failure to diligently implement the remedial plan will constitute an O&M Contractor event of default.

*Compensation.* The O&M Contractor will be paid a monthly operator's fee for the full and timely performance of the Services, such fee to be calculated in accordance with the methodologies set forth in Exhibit I attached to the O&M Contract. Generally, the calculation of the monthly operator's fee will track the calculation of and adjustments to the Service Payments under the Concession Agreement. The O&M Contractor will be responsible for submitting an invoice every month in the form and with the supporting materials required by the District or the Company.

The O&M Contractor will be paid the monthly operator's fee only to the extent that the Company has first received from the District under the Concession Agreement the corresponding Service Payment (or the portion thereof corresponding to such monthly operator's fee) applicable to the corresponding Services performed by the O&M Contractor. In addition, the Service Payments paid by the District to the Company under the Concession Agreement will be the sole source of funds that will be used to pay the O&M Contractor the monthly operator's fees, and the aggregate monthly operator's fees payable in any given calendar year during the operating period will not exceed certain maximum amounts fixed for that year as set forth in Exhibit I to the O&M Contract. Any performance or availability deductions from the Service Payment from Design Build will be applied as a deduction to the Operator's Fee. Any failure of the Company to pay the Monthly Operator's Fee due to the O&M Contractor will not constitute a breach or default by the Company to the extent resulting from the failure by the District to make

the corresponding Service Payments (or portion thereof corresponding to such monthly operator's fee) where such failure does not result from a delay, breach or failure of the Company; provided that in such event, the O&M Contractor will have the right to require the Company to commence procedures to terminate the Concession Agreement and, absent a cure by the District of the failure to pay, terminate the Concession Agreement in accordance with its terms. The Company may elect to make direct payment to the O&M Contractor the amounts which the District has failed to pay, in which case the O&M Contractor's rights as described in the preceding provision will not apply and the O&M Contractor will continue performance of its obligations under the O&M Contract.

**Renewal Works.** Subject to satisfying the invoicing and other requirements set forth in the O&M Contract, the O&M Contractor will be entitled to monthly payments from the Company representing the fixed amount of Renewal Work costs set forth for such month in a Renewal Work Budget and Schedule submitted by the O&M Contractor (as such amount may be adjusted as permitted under the O&M Contract). The O&M Contractor will be paid the Renewal Work payments only to the extent that the Company has first received from the District under the Concession Agreement the corresponding Service Payment (or the portion thereof corresponding to such Renewal Work payment) applicable to the corresponding Services performed by the O&M Contractor. In addition, the Service Payments paid by the District to the Company under the Concession Agreement will be the sole source of funds that will be used to pay the O&M Contractor the Renewal Work payments. Any failure of the Company to pay the Renewal Work payments due to the O&M Contractor will not constitute a breach or default by the Company to the extent resulting from the failure by the District to make the corresponding Service Payments (or portion thereof corresponding to such Renewal Work payment) where such failure does not result from a delay, breach or failure of the Company. The O&M Contractor is responsible for funding all Renewal Work costs to the extent the Renewal Work payments are not sufficient to pay Renewal Work costs incurred or Renewal Work is performed at times other than as scheduled in the Renewal Work Budget and Schedule.

The O&M Contractor will be required to procure an on-demand letter of credit as security for the performance of the Renewal Works if at any time commencing with the year in which the first scheduled element of Renewal Work is to be performed, and continuing through the year in which all the Bonds have been repaid in full, the events described in the following clauses (a), (b) and (c) have occurred:

(a) the amount equal to (i) the costs set forth in the Forecast Renewal Work Schedule for such year <u>less</u> (ii) the costs set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars) <u>less</u> (iii) the amount on deposit in the Renewal Work Account as at January 1 of such year, if a positive number, exceeds the greater of (A) \$1,000,000 or (B) ten percent (10%) of the cost of Renewal Works set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars);

(b) the amount then remaining undrawn in the O&M Letter of Credit <u>less</u> the dollar amount (if a positive number) calculated under clause (i) above is less than an amount equal to 75% of the Required Security Amount; and

(c) the Availability Ratio of any Commuter Rail Service was less than 91% in four or more calendar months in any rolling six-month period in the previous year, or the Performance Deduction Percentage exceeded 2.3% of the Adjustable Base Service Payment for the relevant month in four or more months in any rolling six-month period in the previous year.

The amount of the letter of credit will be equal to 100% of the amount calculated in accordance with clause (a) above with respect to such year and with a stated expiration of not earlier than one year from the issuance date.

So long as no default or O&M Contractor event of default has occurred and is continuing and the O&M Contractor is not subject to increased review and monitoring by the Company under the O&M Contract, the O&M Contractor is entitled to withdraw funds from the Renewal Work Account annually without having to expend such withdrawn funds on Renewal Work, but solely to the extent that the O&M Contractor has demonstrated to the Company and the Technical Advisor that amounts to be paid to the O&M Contractor over the next five years for Renewal Work pursuant to the Renewal Work Budget and Schedule, plus funds remaining in the Renewal Account following any withdrawal as described in this paragraph, are sufficient to meet expenditures anticipated by the thencurrent forecast of Renewal Works, and the Technical Advisor has not reasonably objected to such calculations.

The Company will hold a first-priority security interest in amounts held in the Renewal Work Account. The Company will be entitled to instruct the transfer of control of the Renewal Work Account following the occurrence and continuance of an O&M Contractor event of default (or a default that, with the passage of time or the giving of notice or both, will become an O&M Contractor event of default) unless such event of default or default is cured.

## **Performance Security**

<u>Guaranty</u>. Fluor Corporation, a Delaware corporation, Balfour Beatty, LLC, a Delaware limited liability company, and Balfour Beatty, plc, a public limited company organized under the laws of England, have each executed and delivered a guaranty as security for the performance of the O&M Contractor's obligations under the O&M Contract.

O&M Letter of Credit. As security for the full and timely performance of its obligations under the O&M Contract, the O&M Contractor has provided to the Company, an on-demand letter of credit in the amount of \$26,763,286, adjusted annually for inflation (the "Required Security Amount"), issued by a Qualifying Institution (the "O&M Letter of Credit"). Upon the end of the last Warranty Period to expire, the O&M Letter of Credit will be replenished, to the extent previously drawn, to an amount equal to the then applicable Required Security Amount. The Company will be named as beneficiary of the O&M Letter of Credit, but the Company may assign its rights thereunder to the Trustee as collateral security for the benefit of the Owners of the Bonds. The O&M Letter of Credit will be maintained until the end of the 25<sup>th</sup> calendar year following the year in which the operating period has commenced. Thereafter, subject to the repayment in full of all the Bonds, the O&M Contractor will either (a) replace the O&M Letter of Credit with a performance bond issued by a Oualifying Insurer in a penal amount no less than 50% of the Required Security Amount or (b) renew or replace the outstanding O&M Letter of Credit with one or more replacement letters of credit in a face amount equal to 50% of the Required Security Amount. Such replacement security will be maintained until the later of (a) six months after the end of the operating period and (b) such date on which the O&M Contractor has completed all of its obligations under the O&M Contract to the Company's satisfaction. If warranty claims remain unresolved as of the date the O&M Letter of Credit or the replacement security is otherwise permitted to expire, the O&M Letter of Credit or the replacement security will continue to remain in effect at a reduced amount equal to 150% of the cost reasonably estimated by the Company to correct such warranty claims.

Limitation on Liability. The maximum aggregate liability of the O&M Contractor in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise) in connection with the O&M Contract is limited to an amount equal to \$67,978,884 (as of 2010), adjusted annually for inflation. The limitation on liability does not apply to the following, among other exceptions: (a) the proceeds of insurance, (b) bankruptcy of the O&M Contractor or abandonment of the Services by the O&M Contractor, (c) the O&M Contractor's indemnity obligations, (d) any deductions to any payment of the Monthly Operator's Fee arising from or attributable to any impact to the Availability Ratio or the accrual of Performance Deductions, (e) any interest due and payable from the O&M Contractor's liability for costs and expenses resulting from defects to the Design Build Contractor's work for the period from the expiration of the applicable warranty period through the end of the statute of repose period mandated by applicable law and (g) sums paid by the O&M Contractor to the Design Build Contractor under the Interface Agreement.

Warranty. The Services will be performed by qualified personnel, any repair or replacement of parts or components as part of the Services will be performed in a workmanlike manner using good quality components and materials, respecting the common commuter rail operator industry practices, and the Services will satisfy the required performance standards described in the O&M Contract. In addition, commencing from the expiration of the applicable warranty period under the Design Build Contract and through the end of the statute of repose period mandated by applicable law, the O&M Contractor will be responsible for all costs and expenses resulting from defects, including latent defects, to the Design Build Contractor's work. Further, the O&M Contractor has the prior right to enforce all warranties of vendors and manufacturers that have been assigned to the Company, whether by the O&M Contractor under the O&M Contract, or by the Design Build Contractor under the Design Build Contractor's warranty obligations to the Company or to assure performance of its Services under the O&M Contract.

<u>Modifications</u>. Subject to compliance with applicable procedures and other terms and conditions set forth in the O&M Contract, the Company or the O&M Contractor is entitled to seek a modification to the scope of Services and/or an adjustment to the Monthly Operator's Fee and/or payment or reimbursement of costs and expenses to account for the impact of any Concessionaire Proposed Change, any RTD Proposed Change, any Change in Law Change and any other Relief Event, any proposed deviation from the Project requirements or any delay, breach or failure caused by the Company that delays or disrupts the O&M Contractor's performance of the Services or increases the cost to the O&M Contractor of performing the Services. The O&M Contractor will be entitled to any benefit accruing from a Relief Event solely to the extent and at such times as Concessionaire has actually received the same benefit from the District pursuant to the Concession Agreement.

Suspension of Services for the District Failure to Appropriate. The O&M Contractor will be required to suspend or partially suspend its Services in the manner directed by the District in the event the District reasonably anticipates that the Board will not include any RTD Appropriation Obligations that are payable or expected to be payable during the following Fiscal Year in the District's annual budget for such Fiscal Year or if the Board in fact fails to include any RTD Appropriation Obligations that are payable to the Company under the Concession Agreement for the following Fiscal Year in its annual budget for such Fiscal Year. Any such suspension or partial suspension will be treated as a RTD Proposed Change. During any period of suspension or partial suspension in which the Company is paid the TABOR Portion of Service Payments, such TABOR Portion will first be allocated to pay debt service then outstanding under the Bonds, with no portion of the TABOR Portion to be applied to the payment of any amounts owing to the O&M Contractor until the debt service on the Bonds then outstanding have been paid in full.

#### **Termination Rights**

<u>O&M Contractor Events of Default</u>. Subject to applicable cure periods, the Company is entitled to terminate the O&M Contract for a number of reasons, including but not limited to: (a) the Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Rail Electrified Segment as a single Commuter Rail Service) is less than 89% in five or more calendar months of any rolling seven-month period; provided that a single, continuous event lasting no more than 30 days extending across two calendar months and directly causing the Availability Ratio in both such months to fall below 89%, shall be deemed to have resulted in an Availability Ratio of less than 89% in the first such month only; (b) the Performance Deduction Percentage exceeds 2.9% of the Adjustable Base Service Payment for the relevant month in five or more calendar months of any rolling seven-month period; (c) the O&M Contractor or any Guarantor, as applicable, fails to provide or maintain in effect the letter of credit or parent guaranty, as applicable, required under the O&M Contract; (d) the O&M Contractor fails to make payments due to its subcontractors; (e) the O&M Contractor fails to comply with any material insurance requirement; and (f) the O&M Contractor breaches its obligations in respect of the "disadvantaged and small business enterprises" requirements set forth in the O&M Contract.

If the Company terminates the O&M Contract for any O&M Contractor event of default and/or the District terminates the Concession Agreement in accordance with the terms thereof and such termination is a result of a breach by the O&M Contractor of its obligations under the O&M Contract, the O&M Contractor is responsible for paying the following amounts to the Company: (a) costs reasonably incurred by the Company in replacing the O&M Contractor to perform the Services, (b) all direct damages suffered or incurred by the Company as a result of such termination and/or the acts or omissions of the O&M Contractor leading to such termination, including, where the Concession Agreement has not been terminated, the costs and expenses reasonably attributable to the employment of a different operator to fulfill the O&M Contractor to properly fulfill the residual lifecycle requirements of the Concession Agreement, and (d) any damages, costs and expenses suffered or incurred by the Concession Agreement, the Financing Documents (including principal, interest and other amounts payable thereunder) or any other related agreement as a result of such termination.

<u>Concessionaire Events of Default</u>. Subject to applicable cure periods and all cure rights of the District under the Concession Agreement and of the Trustee pursuant to its direct agreement with the Company and the O&M Contractor, the O&M Contractor is entitled to terminate the O&M Contract for the following reasons: (a) bankruptcy or insolvency proceeding of the Company, (b) failure by the Company to make payment of any undisputed amounts to the O&M Contractor, and (c) only if relief cannot be provided by issuance of a modification thereunder, the Company otherwise is in default or has failed to perform any of its other material obligations under the O&M Contract.

In the event the O&M Contractor terminates the O&M Contract as described above, the Company will pay the following amounts to the O&M Contractor as the O&M Contractor's sole and exclusive remedy: (a) Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor and (b) Operator Breakage Costs.

<u>District Termination of Concession Agreement</u>. If the District terminates the Concession Agreement as a result of a breach by the Company (and not a result of a breach by the O&M Contractor), the Company will pay the O&M Contractor the O&M Contractor termination payments in an amount equal to (a) the Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor, and (b) Operator Breakage Costs, as the O&M Contractor's sole and exclusive remedy, and hold the O&M Contractor completely harmless for any damages or claims incurred by the O&M Contractor as a result of such termination. To the extent the District terminates the Concession Agreement as a result of a breach by the O&M Contractor of its obligations under the O&M Contract, the O&M Contractor will compensate the Company for any damages incurred by the Company as a result of such termination, which damages will include return of (but not return on) any equity invested in the Company and any amounts required to be paid by the Company to the Owners of the Bonds which is due and payable as a result of such termination.

Other Termination. Without prejudice to any other provision of the O&M Contract, and subject to the payment in full by the Company to the O&M Contractor of termination payments equal to the sum of (a) the Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor, and (b) Operator Breakage Costs, as the O&M Contractor's sole and exclusive remedy, the O&M Contract will automatically terminate and have no further force and effect in the event of certain Extensive Force Majeure Events (as defined in the Concession Agreement) and in the event the Concession Agreement is terminated as a result of an "RTD Termination Event" as defined in the Concession Agreement. Operator Breakage Costs will be payable to the O&M Contractor in connection with a termination for an Extensive Force Majeure Event and an RTD Termination Event only to the extent the corresponding "Subcontractor Breakage Costs" payable in respect of the "RTD Default Amount" or the "FM Termination Amount" (each as defined in the Concession Agreement), as applicable, (i) are received by the Company from the District, (ii) such amounts are incurred by the O&M Contractor under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on commercially reasonable terms, and (iii) the O&M Contractor and any relevant subcontractor have each used its reasonable efforts to mitigate such amounts.

For a more detailed summary of the major provisions of the O&M Contract, see APPENDIX F— "SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

#### **Interface Agreement**

*Generally.* The Interface Agreement has been executed among the Company, the Design Build Contractor and the O&M Contractor and sets forth terms by which the Design Build Contractor and the O&M Contractor will effectively cooperate and coordinate with each other in the performance of their respective obligations under the Design Build Contract and the O&M Contract.

Under the Interface Agreement, each Contractor agrees that the performance or nonperformance of the other Contractor will not be a defense available to the first Contractor for its own breach or failure to perform its obligations under its Contract, and that, except as otherwise expressly provided in the Interface Agreement or its Contract, each Contractor will not be excused from performing its obligations under its Contract and will not be entitled to any relief as a result of any act, omission, performance or non-performance by the other Contractor. The Contractors agree to a division of responsibility between them prior to the start of revenue service of the Project as set out in the Interface Agreement.

Acknowledgment of the District's Rights. The parties acknowledge certain of the District's rights to take certain actions in the event of a "Concessionaire Termination Event" (as defined in the Concession Agreement) under the Concession Agreement, and the parties will fully cooperate with the District in its exercise of these rights.

### Interface During Operating Period

<u>Defects</u>. Until the end of the applicable Warranty Period under the Design Build Contract, on discovering a defect or deficiency in the Design Build Contractor's design and construction work, or a condition that could reasonably likely be or become such a defect or deficiency, the O&M Contractor will be entitled promptly to correct or otherwise remedy the defect or deficiency at the Design Build Contractor's sole cost if the condition creates an emergency resulting in an immediate need and serious threat to public health, safety, security or the environment. If the defect or deficiency does not create an emergency, but Performance Deductions have begun to accrue or the Availability Ratio has been impacted or the Project has begun to accumulate STOP Points, then the O&M Contractor may nevertheless remedy the defect or deficiency at the Design Build Contractor's sole cost. Any dispute as to a defect or deficiency, including disputes as to the extent of the Design Build Contractor's liability will be resolved in accordance with dispute resolution procedures provided in the Interface Agreement.

<u>Amendments to O&M Contract</u>. Except to the extent required to comply with the Concession Agreement or applicable law, the O&M Contractor and the Company will not, without the prior reasonable written consent of the Design Build Contractor, agree to any amendments, supplements or modifications to the O&M Contract that are reasonably expected to have a material adverse impact on the rights or obligations of the Design Build Contract, unless such material adverse impact has been compensated for or otherwise remedied by a scope change order to the Design Build Contract.

#### Claims between the Design Build Contractor and the O&M Contractor

<u>O&M Contractor Indemnity</u>. The O&M Contractor will indemnify and hold harmless the Design Build Contractor from and against (a) all damages arising out of losses to the extent covered by the proceeds of insurance insuring the O&M Contractor, (b) all damages arising out of losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the O&M Contractor, (c) all liability of the Design Build Contractor to Concessionaire for liquidated damages or failure to obtain the Revenue Service Commencement Date by the applicable target dates to the extent caused by a breach of the O&M Contractor under the O&M Contract and (d) all liability of the Design Build Contractor to Concessionaire arising out of termination of the Design Build Contract to the extent caused by a breach by the O&M Contractor of its obligations under the O&M Contract, except, in each case, to the extent caused, or contributed to, by any act or omission of the Design Build Contractor. Any amount recovered under this indemnity will not be subject to or subtracted from the maximum liability of the O&M Contract.

<u>Design Build Contractor Indemnity</u>. The Design Build Contractor will indemnify and hold harmless the O&M Contractor from and against (a) all losses to the extent covered by the proceeds of insurance insuring the Design Build Contractor and (b) all losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the Design Build Contractor, except, in each case, to the extent caused, or contributed to, by any act or omission of the O&M Contractor. Any amount recovered under this indemnity will not be subject to or subtracted from the maximum liability of the Design Build Contractor set out in the Design Build Contract.

<u>Prohibition Against Claims</u>. Except as specified in the indemnities described above and each Contractor's liability for costs as provided in the Interface Agreement, each Contractor will not bring against the other Contractor any action, cause of action, suit, proceeding, claim, demand or complaint, whether at law or in equity, which the first Contractor may have with respect to any matter relating to a breach by the other Contractor of its Contract or any loss suffered or incurred by the first Contractor by reason of or relating to any act or omission of the other Contractor.

<u>Amounts Not Subject to Maximum Liability</u>. No amounts paid under the Interface Agreement by the Design Build Contractor or the O&M Contractor will apply to the limitation of liability applicable to the relevant

Contractor under its respective Contract, nor will any such amounts be paid out of any security provided by the relevant Contractor under its respective Contract.

<u>Termination</u>. In the event either of the Contracts is terminated but the Concession Agreement has not been terminated, the Interface Agreement will be terminated as regards the Contractor whose Contract has been terminated (subject to liability of the Contractor accrued under the Interface Agreement prior to such termination), and if Concessionaire enters into a new contract with another contractor for any aspect of the design and construction work or Services, as the case may be, which has been terminated, Concessionaire will cause such contractor to enter into an agreement on terms substantially similar to the terms of the Interface Agreement. In the event the Concession Agreement is terminated, the Interface Agreement will automatically terminate; provided that if the District, in the exercise of its "step-in" rights under the Concession Agreement, the Contractors to enter into a new interface agreement on terms substantially similar to the Interface Agreement, the Contractors will do so.

#### **Rolling Stock Supply Contract**

The Design Build Contractor entered into a Rolling Stock supply contract with Hyundai Rotem USA Corp. (the "Rolling Stock Supplier"). The Rolling Stock Supplier supplied all labor, supervision, spare parts, tools, equipment, installed and consumable materials, services, testing devices and warehousing and each and every item of expense necessary for the supply of the Rolling Stock, including the design, manufacture, assembly, delivery to site, testing and commissioning, support for the commencement of revenue service and maintenance training for new Electric Multiple Unit commuter rail passenger cars. Generally, the Rolling Stock Supply Contract contains terms and provisions in relation to technical requirements, completion and acceptance criteria, relief events and other allocations of cost and risk that are consistent with the Design Build Contract.

*Limitation on Liability.* Subject to the terms of the Rolling Stock Supply Contract, the Rolling Stock Supplier's aggregate liability for breach or termination of the Rolling Stock Supply Contract in tort, contract or for breach of statutory duty or otherwise is limited to the Contract Price. Such limitation will not cover abandonment, bankruptcy, willful default or fraud of the Rolling Stock Supplier or the proceeds of insurance required to be maintained in accordance with the Rolling Stock Supply Contract.

*Warranty.* The Rolling Stock Supplier warrants to the Design Build Contractor and the Company that the work it performs under the Rolling Stock Supply Contract will comply strictly with the provisions thereof and all specifications, drawings and standards referred to in such contract or thereafter furnished by the Design Build Contractor, and that such work will be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by the Rolling Stock Supplier. The Rolling Stock Supplier warrants that all materials, equipment and supplies furnished by it for the work will be new, merchantable, of the most suitable grade and fit for their intended purposes. The foregoing warranties will apply until the following dates: for Car Structure and Truck Frame, January 5, 2033; and for a general warranty on two of the Rolling Stock Cars, January 5, 2021 (each such period, a "Rolling Stock Warranty Period"). Any period wherein the work is not available for use due to defects in materials, workmanship or engineering furnished by the Rolling Stock Supplier will extend the applicable Rolling Stock Warranty Period by an equal period of time. Design and engineering, labor, equipment and materials furnished by the Rolling Stock Supplier to repair, replace or remedy defects will be warranted for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the Rolling Stock Warranty Period, whichever is longer.

*Performance Security.* The Rolling Stock Supplier has provided a parent company guaranty from Hyundai Rotem Company. In the event that the credit rating of the parent guarantor diminishes substantially, in certain circumstances, the Rolling Stock Supplier will be required to provide a parent company guaranty from a higher-tier creditworthy parent entity.

#### **Direct Agreements**

The following direct agreements are in effect for the benefit of the Trustee on behalf of the Owners of the Bonds:

(a) The District and the Company entered into a direct agreement with the Trustee that set forth certain assurances of the rights of the Owners of the Bonds with respect to the Concession Agreement in the event of a default thereunder by the Company, including step-in and cure rights, forbearance obligations of the District with respect to its exercise of remedies under the Concession Agreement, rights of substitution and other rights of the Owners of the Bonds. This direct agreement does not provide for any rights of the Trustee beyond the applicable rights expressly set forth in the Concession Agreement. For additional information, see APPENDIX D— "SUMMARY OF CERTAIN PROVISIONS OF THE LENDERS' DIRECT AGREEMENT."

(b) The Design Build Contractor entered into a direct agreement with the Trustee providing for its consent to the pledge and assignment of, and the granting of a lien on, all of the Company's right, title and interest in the Design Build Contract, and certain assurances of the Trustee's rights with respect to the Design Build Contract generally.

(c) The O&M Contractor entered into a direct agreement with the Trustee providing for its consent to the pledge and assignment of, and the granting of a lien on, all of the Company's right, title and interest in the O&M Contract, and certain assurances of the Secured Parties' rights with respect to the O&M Contract generally.

# PERMITS AND ENVIRONMENTAL COMPLIANCE

The Company is responsible for ensuring compliance with all of the permit conditions required during the Operating Period.

#### **Company Permits**

Permits required for operation of the Project are the Company's responsibility, including any permits under Section 404 of the Clean Water Act (the "Section 404 Permits") for wetland disturbances not yet identified. To assist the Company, the District entered into intergovernmental agreements with State, county and city agencies that have permit jurisdiction related to components or areas of the Project.

#### **Compliance, Site Contamination and Cleanup**

The Company is responsible for adhering to federal State and local codes, regulations and standards during the operation of the Project. These compliance responsibilities have been passed on to the O&M Contractor under the O&M Contract. An important element of these compliance obligations is the responsibility for management and remediation of contaminated soil and groundwater contamination found along the Project rights of way.

Several portions of the Project Site, including sites on the East Corridor, the Gold Line and the CRMF include contaminated areas. The District agreed either to reimburse the Company for the Company's actual costs of clean-up, up to the cost estimate proposed by the Company, or to perform the cleanup itself. The Company prepared an application to be submitted by the District for the CRMF, Gold Line, and the East Corridor to qualify these sites for management under the State's Voluntary Clean-up and Redevelopment Act (the "VCUP program"). Under this statute, an owner of contaminated property may insulate itself from liability under laws such as the ("CERCLA") by submitting a plan to remediate the contamination present on its property. The District received a "No Action Determination Approval for RTD East Corridor Commuter Rail, in Denver and Adams County". On April 25, 2018, the District received a "No Action Determination Approval for RTD East Corridor Commuter Rail, in Denver and Adams County". On April 25, 2018, the District received a "No Action Determination Approval for RTD East Corridor Commuter Rail, in Denver and Adams County". On April 25, 2018, the District received a "No Action Determination Approval for RTD Gold Line and Maintenance Facility, in Denver, Arvada and Wheat Ridge, CO". These two approval notices from the Colorado Department of Public Health and Environment serve as confirmation of completion of the VCUP program.

#### **TECHNICAL ADVISOR REPORT**

Infrata was appointed by the Company to act as Technical Advisor for the Project. The role of the Technical Advisor at this stage is to carry out due diligence on the Project as part of the refinancing process. Infrata completed the Technical Advisor Report, dated November 17, 2020 (the "Technical Advisor Report"). Certain conclusions made by Infrata related to these areas of review are detailed below. A complete copy of the Technical Advisor Report is set forth in APPENDIX J—"TECHNICAL ADVISOR REPORT" to this Official Statement.

**Project Parties & Experience**: The Equity Participants of the Project are Aberdeen (45%), John Laing (45%) and Fluor (10%). These are experienced equity members with a proven track record in similar projects in both North America and worldwide. Fluor and BBRI (i) each hold an equal share of the Design Build Contractor (50%); and (ii) together with ACI, also form the O&M Contractor (each with 33%). All team members have established working relationships through their prior and successful experience working together in similar projects within the region. Considering the Project's current operational status, and factoring in the availability and performance to date, the Technical Advisor considers the O&M Contractor is capable of effectively performing the O&M services and complying with the technical specifications of the Concession Agreement.

**Project Contracts & Security Package**: A review has been undertaken of the principal contract documents, being the main provisions of the Concession Agreement, Design Build Contract, O&M Contract, Rolling Stock Supply Contract and Interface Agreement. The assignment of risks of responsibilities from the Company to the respective subcontractors is considered appropriate given the nature of the Project. The provisions for Relief Events, Force Majeure and Delay Events are generally consistent with the market standard and offer adequate protection to the Company. The Technical Advisor has undertaken a review of the principal components of the security package within the O&M Contract, which are found to offer robust protection to the Company. The Technical Advisor has undertaken a worst-case analysis for the replacement of the O&M Contract to assess whether the current security package is sufficient to cover the total additional costs that could be generated in such a scenario. The limitation of liability and size of the O&M Letter of Credit are found to be sufficient security components in a worst-case scenario. There is no prefunded major maintenance reserve account as the Renewal Work is passed down to the Operator, but this is mitigated in the short term by the provision for a Renewal Works Letter of Credit (and for the funding of a Renewal Works Reserve Account by the Company for any difference against the required Renewal Works Letter of Credit amount) and the O&M Letter of Credit, when Project conditions necessitate it.

**Construction Status & Legacy Issues**: The Technical Advisor has undertaken a virtual site visit of the Project based upon video and photo evidence provided by the Company in order to provide a general assessment of the state of the as-built infrastructure, taking into account the age of certain components, expected design life and O&M requirements. The structures, stations and track are all considered to be in generally good condition and fit for purpose based upon the assessment. There are 16 bridges which were retrofitted to comply with the relevant American Railway Engineering and Maintenance-of-Way Association standard for rail bridges that have required an increased inspection regime and may generate additional costs such as for repainting at a later stage in the Project. Any such costs are not expected to be significant and would be assumed by the O&M Contractor, as a settlement has already been made with the Design Build Contractor through the Interface Agreement. All construction milestones, being the Revenue Service Commencement Certificates and Final Completion Certificates, have been achieved. In addition, the Technical Advisor notes there are no open quality logs, legacy issues or defects which is positive. In the event of these being identified, they would be the risk of the Design Build Contractor.

**Operations**: The O&M Contractor's organizational structure is considered suitable and contains the expected roles. It has demonstrated a high level of performance against the operations and maintenance requirements since the beginning of the Project. There is a demand for qualified personnel in the Denver region and the Project has a relatively high staff turnover, but it is considered that the O&M Contractor continues to take appropriate measures to mitigate against this risk through its proactive approach to hiring of specialist staff. The reporting process with the Company and the District is clear and in line with the expected frequency. The O&M Contractor has developed industry standard practices to ensure health and safety on the Project, particularly to minimize trespassing and other third-party risks. The O&M Contractor effectively implements an Enterprise Asset

Management software ("EAMs") developed by Trapeze to register the status of the asset condition through a real time system of alerts and notifications, prompting maintenance activities and operational tasks. The EAMs also assists in the generation of reports for the evaluation of compliance against the operations and maintenance requirements, providing an integrated and competent system for evaluating the O&M Contractor ongoing performance. The effects of Covid-19 on the operations of the Project have not been considered significantly detrimental, the costs for additional measures are relatively minor and are expected to be recovered through a Relief Notice (as defined in the Concession Agreement) which is currently in process.

**Renewals**: Renewals are undertaken by the O&M Contractor, which has developed a series of maintenance and renewal plans in order to plan the renewal interventions by asset class. The Technical Advisor has reviewed the general assumptions for the main replacement interventions for rolling stock, track, stations and civils, communication systems, signaling and track controls, power distribution, bridges and structures and is satisfied that the frequency of intervention periods for the main components appear in line with federal and manufacturer recommendations. The total costs have been provided for these subcategories and although detail is not available, the overall expenditure profiles and frequencies follow the Technical Advisor's expectations for similar infrastructure. The renewal plan is revised annually as per the O&M Contract, ensuring visibility of future interventions for the coming 5 years.

**Environmental**: The Project has reached the Operating Period and has in place all necessary permits which were obtained during construction, having been procured on the basis of the Environmental Impact Statement ("EIS") in compliance with the policies and procedures under the National Environmental Policy Act ("NEPA"). There are no outstanding environmental contingencies or issues identified at the time of this report. An assessment has been undertaken against the Equator Principles and the Project is considered a Category B Project based upon its potential impacts and scope of mitigations which were implemented in the development of the technical solution. The Project is found to be generally compliant, although there is a compliance gap noted against Principles 4, given that the Company has ceased to report against its Sustainability Plan following instruction from the District.

**Payment Mechanism**: The availability payment mechanism is similar to other commuter railway payment mechanism structures seen elsewhere, with an emphasis on maintaining a good user experience in respect of adhering to timetable, compliance with operations and maintenance standards and availability. The penalty regime captures the basic principles of availability and performance-based adjustments. During the first 4+years of operations, the O&M Contractor has been below the non-compliance points (STOP Points) threshold (barring one month at the very start of operations) and therefore performance deductions have not been incurred by the O&M Contractor. Excluding the first year of operations which are not representative due to the ramp up period and close out of construction legacy issues, the O&M Contractor has obtained on average an Availability Factor above 100% which would imply that the Project has (on average) received bonuses (see Table 9-2 of APPENDIX J—"Technical Advisor Report"). The Technical Advisor has undertaken its own probable, optimistic, pessimistic and termination trigger case deduction analyses, finding the payment mechanism and overall termination triggers within the O&M Contract and Concession Agreement to be relatively benign.

**Project Costs**: The overall opex budget is considered to be within a comparable range of other projects of similar scope and characteristics, although information was not available to make a more detailed assessment of the suitability of the budget in terms of the expected level of service and operations and maintenance requirements. The companies that form the O&M Contractor have recently achieved financial close on projects of similar scope and complexity, such that the Technical Advisor considers the costing information has been suitably market tested. During the years the Project has been in operation (i) the Monthly Operator's Fee has been sufficient for the O&M Contractor to perform its obligations without requiring any budget modification; and (ii) the contingency allowance has not been used, with the costs so far performing within the budget. The O&M Contractor also has in place a robust approach to cost management and procurement which provides further comfort over the adequacy of the current budgets.

#### LITIGATION

#### The Issuer

At the time of delivery and payment for the Series 2020 Bonds, the Issuer will deliver a certificate substantially to the effect that there is no litigation or other proceeding of any nature now pending or threatened against or adversely affecting the Issuer of which the Issuer has notice or, to the Issuer's knowledge, any basis therefor, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2020 Bonds, or in any way contesting or affecting the validity of the Series 2020 Bonds, the resolutions adopted by the Issuer to authorize the transaction, the Issuer's obligation to provide certain continuing disclosure as set forth in the Continuing Disclosure Undertaking, or any proceedings of the Issuer taken with respect to the issuance or sale of the Series 2020 Bonds, or the pledge, collection or application of any moneys or security provided for the payment of the Series 2020 Bonds, or the existence, powers or operations of the Issuer, or contesting the completeness or accuracy of this Official Statement or any supplement or amendment thereto.

#### The Company

At the time of delivery and payment for the Series 2020 Bonds, the Company will deliver a certificate substantially to the effect that there is no litigation or other proceeding of any nature now pending or threatened against or adversely affecting the Company of which the Company has notice or, to the Company's knowledge, any basis therefor, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2020 Bonds, or in any way contesting or affecting the validity of the Series 2020 Bonds, the resolutions adopted by the Company to authorize the transaction, the Company's obligation and agreement to provide certain continuing disclosure as set forth in the Loan Agreement and the Continuing Disclosure Undertaking, or any proceedings of the Company taken with respect to the issuance or sale of the Series 2020 Bonds, or the pledge, collection or application of any moneys or security provided for the payment of the Series 2020 Bonds, or the existence, powers or operations of the Company, or contesting the completeness or accuracy of this Official Statement or any supplement or amendment thereto.

#### **Pending Litigation**

Litigation between the District and the Company is currently pending before the Colorado District Court (the "Court") as a result of claims submitted by the Design Build Contractor claiming that it is entitled to cost relief due to additional costs incurred as a result of a Change in Law or Relief Event. Under the Design Build Contract, the Company's obligation to pay the Design Build Contractor any incurred costs as a result of any such events is subject to the Company's receipt of funds from the District under the Concession Agreement for such events. The Company filed a claim under the Concession Agreement for relief from the District and the District filed related counterclaims. Trial for the litigation concluded on October 16, 2020 and, as of the date of this Official Statement, the District and the Company are waiting for a decision from the Court.

To date, the Design Build Contractor has largely borne the costs that are the subject of the litigation. The Company also filed ancillary claims related to consultant costs; however, the aggregate amount of these separate claims is not material and does not materially impact the Company's investment returns. Accordingly, the ultimate outcome of the litigation will not have a material financial impact on the Company or the Owners of the Series 2020 Bonds.

# CONTINUING DISCLOSURE OF INFORMATION

Pursuant to the requirements of the Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) ("Rule 15c2-12"), the Company and the Issuer have agreed in a Continuing Disclosure Undertaking, dated as of December 1, 2020 (the "Continuing Disclosure Undertaking"), among the Company, the Issuer and Digital Assurance Certification, L.L.C., as the Dissemination Agent, to provide certain financial information, other operating data and notices of material events for the benefit of the Owners of the Series 2020 Bonds. A form of the Continuing Disclosure Undertaking is attached hereto as APPENDIX K. A failure by the Issuer, the Company or the Dissemination Agent to comply with the Continuing Disclosure Undertaking does not constitute an Event of Default under the Indenture. Nevertheless, such a failure must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2020 Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price. Over the last five years, the District and the Company have been in substantial compliance with their continuing disclosure agreements under Rule 15c2-12.

In addition to the reporting obligations described above, the Company is obligated under the Loan Agreement to deliver to the Trustee, not later than 90 days after the end of each fiscal quarter of the Company, a report showing (A) the operating data for the Project for the previous quarter and for the year to date, including total Project Revenues and total O&M Expenditures incurred and (B) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual O&M Expenditures incurred and the actual O&M Expenditures incurred and the budgeted O&M Expenditures, together with a brief narrative explanation of the reasons for any variance of 10% or more.

The Company has additional reporting obligations under the Loan Agreement. See APPENDIX I— "SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT."

# LEGAL MATTERS

The Issuer will furnish the Underwriters a transcript of certain proceedings incident to the authorization and issuance of the Series 2020 Bonds. The District will also furnish the approving legal opinion of Bond Counsel to the Issuer as set forth in APPENDIX L—"FORM OF APPROVING OPINION OF BOND COUNSEL."

The various legal opinions to be delivered concurrently with the delivery of the Series 2020 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The Series 2020 Bonds are offered when, as and if executed and delivered and accepted by the Underwriters and subject to the approving legal opinion of Butler Snow LLP, as Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel, Melanie Snyder, and its disclosure counsel, Hogan Lovells LLP; for the Company by its counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York and Kline Alvarado Veio, P.C., Denver, Colorado; and for the Underwriters by their counsel, Nixon Peabody LLP, New York.

# TAX MATTERS

#### Series 2020A Bonds

*General Matters.* In the opinion of Butler Snow LLP, Bond Counsel, under existing laws, regulations, rulings and judicial decisions, interest on the Series 2020A Bonds (including any original issue discount properly allocable to the owner of a Series 2020A Bond) (a) is excludable from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date of delivery of the Series 2020A Bonds (the "Code"), except for interest on any Series 2020A Bond for any period during which such Series 2020A Bond is held by a "substantial user" of the facilities refinanced with the proceeds of the Series 2020A Bonds or a "related person" within the meaning of Section 147(a) of the Code, (b) is not a specific preference item for purposes of the federal alternative minimum tax, and (c) is excludable from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect on the date of delivery of the Series 2020A Bonds. The opinion described above assumes the accuracy of certain representations and compliance by the Issuer and the Company with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the Series 2020A Bonds. Failure to comply with such requirements could cause interest on the Series 2020A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2020A Bonds. Each of the Issuer and the Company has covenanted to comply with such requirements.

The accrual or receipt of interest on the Series 2020A Bonds may otherwise affect the federal income tax liability of the Owners of the Series 2020A Bonds. The extent of these other tax consequences will depend on such Owners' particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the Series 2020A Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States of America), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers entitled to claim the earned income credit, taxpayers entitled to claim the refundable credit in Section 36B of the Code for coverage under a qualified health plan or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the Series 2020A Bonds.

**Original Issue Discount.** The Series 2020A Bonds that have an original yield above their respective interest rates, as shown on the inside cover of this Official Statement (collectively, the "Discount Series 2020A Bonds"), are being sold at an original issue discount. The difference between the initial public offering prices of such Discount Series 2020A Bonds and their stated amounts to be paid at maturity constitutes original issue discount treated in the same manner for federal income tax purposes as interest, as described above.

The amount of original issue discount that is treated as having accrued with respect to a Discount Series 2020A Bond or is otherwise required to be recognized in gross income is added to the cost basis of the owner of the bond in determining, for federal income tax purposes, gain or loss upon disposition of such Discount Series 2020A Bond (including its sale, redemption or payment at maturity). Amounts received on disposition of such Discount Series 2020A Bond that are attributable to accrued or otherwise recognized original issue discount will be treated as federally tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual Discount Series 2020A Bond, on days that are determined by reference to the maturity date of such Discount Series 2020A Bond. The amount treated as original issue discount on such Discount Series 2020A Bond for a particular semiannual accrual period is equal to (a) the product of (i) the yield to maturity for such Discount Series 2020A Bond (determined by compounding at the close of each accrual period) and (ii) the amount that would have been the tax basis of such Discount Series 2020A Bond at the beginning of the particular accrual period if held by the original purchaser, less (b) the amount of any interest payable for such Discount Series 2020A Bond during the accrual period. The tax basis for purposes of the preceding sentence is determined by adding to the initial public offering price on such Discount Series 2020A Bond the sum of the amounts that have been treated as original issue discount for such purposes during all prior periods. If such Discount Series 2020A Bond is sold between semiannual compounding dates, original issue discount that would have been accrued for that

semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of Discount Series 2020A Bonds should consult their tax advisors with respect to the determination and treatment of original issue discount accrued as of any date, with respect to when such original issue discount must be recognized as an item of gross income, and with respect to the state and local tax consequences of owning a Discount Series 2020A Bond. Subsequent purchasers of Discount Series 2020A Bonds that purchase such Discount Series 2020A Bonds for a price that is higher or lower than the "adjusted issue price" of the Discount Series 2020A Bonds at the time of purchase should consult their tax advisors as to the effect on the accrual of original issue discount.

**Original Issue Premium.** The Series 2020A Bonds that have an original yield below their respective interest rates, as shown on the inside cover of this Official Statement (collectively, the "Premium Series 2020A Bonds"), are being sold at a premium. An amount equal to the excess of the issue price of a Premium Series 2020A Bond over its stated redemption price at maturity constitutes premium on such Premium Series 2020A Bond. A purchaser of a Premium Series 2020A Bond must amortize any premium over such Premium Series 2020A Bond's term using constant yield principles, based on the purchaser's yield to maturity (or, in the case of Premium Series 2020A Bonds callable prior to their maturity, generally by amortizing the premium to the call date, based on the purchaser's yield to the call date and giving effect to any call premium). As premium is amortized, the amount of the amortization offsets a corresponding amount of interest for the period, and the purchaser's basis in such Premium Series 2020A Bond is reduced by a corresponding amount resulting in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Series 2020A Bond prior to its maturity. Even though the purchaser's basis may be reduced, no federal income tax deduction is allowed. Purchasers of the Premium Series 2020A Bonds should consult their tax advisors with respect to the determination and treatment of premium for federal income tax purposes and with respect to the state and local tax consequences of owning a Premium Series 2020A Bond.

**Backup Withholding.** As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on federally tax-exempt obligations such as the Series 2020A Bonds is subject to information reporting in a manner similar to interest paid on taxable obligations. Backup withholding may be imposed on payments to any owner of the Series 2020A Bonds that fail to provide certain required information including an accurate taxpayer identification number to any person required to collect such information pursuant to Section 6049 of the Code. The reporting requirement does not in and of itself affect or alter the excludability of interest on the Series 2020A Bonds from gross income for federal income tax purposes or any other federal tax consequence of purchasing, holding or selling federally tax-exempt obligations.

#### Series 2020B Bonds

The following is a summary of certain material federal income tax consequences of the purchase, ownership and disposition of the Series 2020B Bonds for the investors described below and is based on the advice of Butler Snow LLP, as Bond Counsel. This summary is based upon laws, regulations, rulings and decisions currently in effect, all of which are subject to change. The discussion does not deal with all federal tax consequences applicable to all categories of investors, some of which may be subject to special rules, including but not limited to, partnerships or entities treated as partnerships for federal income tax purposes, pension plans and foreign investors, except as otherwise indicated. In addition, this summary is generally limited to investors that are "U.S. holders" (as defined below) who will hold the Series 2020B Bonds as "capital assets" (generally, property held for investment) within the meaning of Section 1221 of the Code. Investors should consult their own tax advisors to determine the federal, state, local and other tax consequences of the purchase, ownership and disposition of Series 2020B Bonds. Prospective investors should note that no rulings have been or will be sought from the Internal Revenue Service (the "Service") with respect to any of the federal income tax consequences discussed below, and no assurance can be given that the Service will not take contrary positions.

As used herein, a "U.S. holder" is a "U.S. person" that is beneficial owner of a Series 2020B Bond. A "non U.S. holder" is a holder (or beneficial owner) of a Series 2020B Bond that is not a U.S. person. For these purposes, a "U.S. Person" is a citizen or resident of the United States, a corporation or partnership created or organized in or under the laws of the United States or any political subdivision thereof (except, in the case of a partnership, to the

extent otherwise provided in the Treasury Regulations), an estate the income of which is subject to United States federal income taxation regardless of its source or a trust if (i) a United States court is able to exercise primary supervision over the trust's administration and (ii) one or more United States persons have the authority to control all of the trust's substantial decisions.

*General Matters.* Although the Series 2020B Bonds are issued by the Issuer, interest on the Series 2020B Bonds (including original issue discount treated as interest) is not excludable from gross income for federal income tax purposes under Section 103 of the Code and is not excludable from gross income for Colorado income tax purposes. Interest on the Series 2020B Bonds (including original issue discount treated as interest) will be fully subject to federal and Colorado income taxation. Thus, owners of the Series 2020B Bonds generally must include interest (including original issue discount treated as interest) on the Series 2020B Bonds in gross income for federal and Colorado income tax interest) on the Series 2020B Bonds in gross income for federal and Colorado income tax purposes.

To ensure compliance with Treasury Circular 230, Owners of the Series 2020B Bonds should be aware and are hereby put on notice that: (a) the discussion in this Official Statement with respect to U.S. federal income tax consequences of owning the Series 2020B Bonds is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer; (b) such discussion was written in connection with the promotion or marketing (within the meaning of Treasury Circular 230) of the transactions or matters addressed by such discussion; and (c) each taxpayer should seek advice based on its particular circumstances from an independent tax advisor.

*Taxation of Interest Income of the Series 2020B Bonds*. Payments of interest with regard to the Series 2020B Bonds will be includible as ordinary income when received or accrued by the holders thereof in accordance with their respective methods of accounting and applicable provisions of the Code.

Payments of interest received with respect to the Series 2020B Bonds will also constitute investment income for purposes of certain limitations of the Code concerning the deductibility of investment interest expense. Potential holders of the Series 2020B Bonds should consult their own tax advisors concerning the treatment of interest payments with regard to the Series 2020B Bonds.

A purchaser (other than a person who purchases a Series 2020B Bond upon issuance at the issue price) who buys a Series 2020B Bond at a discount from its principal amount (or its adjusted issue price if issued with original issue discount greater than a specified de minimis amount) will be subject to the market discount rules of the Code. In general, the market discount rules of the Code treat principal payments and gain on disposition of a debt instrument as ordinary income to the extent of accrued market discount. Each potential investor should consult his tax advisor concerning the application of the market discount rules to the Series 2020B Bonds.

Sale or Exchange of the Series 2020B Bonds. If an Owner sells a Series 2020B Bond, such person will recognize gain or loss equal to the difference between the amount realized on such sale and the Owner's basis in such Series 2020B Bond. Ordinarily, such gain or loss will be treated as a capital gain or loss. If the terms of a Series 2020B Bond were materially modified, in certain circumstances, a new debt obligation would be deemed created and exchanged for the prior obligation in a taxable transaction. Among the modifications which may be treated as material are those which relate to redemption provisions and, in the case of a nonrecourse obligation, those which involve the substitution of collateral. Each potential holder of a Series 2020B Bond should consult its own tax advisor concerning the circumstances in which the Series 2020B Bonds would be deemed reissued and the likely effects, if any, of such reissuance. The legal defeasance of the Series 2020B Bonds may result in a deemed sale or exchange of such Series 2020B Bonds under certain circumstances. Owners of such Series 2020B Bonds should consult their tax advisors as to the federal income tax consequences of such a defeasance.

**Backup Withholding**. Certain purchasers may be subject to backup withholding at the application rate determined by statute with respect to interest paid with respect to the Series 2020B Bonds, if the purchasers, upon issuance, fail to supply the indenture trustee or their brokers with their taxpayer identification numbers, furnish incorrect taxpayer identification numbers, fail to report interest, dividends or other "reportable payments" (as defined in the Code) properly, or, under certain circumstances, fail to provide the indenture trustee with a certified statement, under penalty of perjury, that they are not subject to backup withholding.

*Tax Treatment of Original Issue Discount*. The Series 2020B Bonds that have an original yield above their interest rate, as shown on the inside cover page of this Official Statement, are being sold at a discount (the "Discounted Obligations"). The difference between the initial public offering prices, as set forth on the inside cover hereof, of the Discounted Obligations and their stated amounts to be paid at maturity, constitutes original issue discount treated in the same manner for federal income tax purposes as interest, as described above.

In the case of an owner of a Discounted Obligation, the amount of original issue discount which is treated as having accrued with respect to such Discounted Obligation is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of a Discounted Obligation (including its sale, redemption or payment at maturity). Amounts received upon disposition of a Discounted Obligation which are attributable to accrued original issue discount will be treated as taxable interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual Discounted Obligation, on days which are determined by reference to the maturity date of such Discounted Obligation. The amount treated as original issue discount on a Discounted Obligation for a particular semiannual accrual period is equal to (a) the product of (i) the yield to maturity for such Discounted Obligation (determined by compounding at the close of each accrual period) and (ii) the amount which would have been the tax basis of such Discounted Obligation at the beginning of the particular accrual period if held by the original purchaser, (b) less the amount of any interest payable for such Discounted Obligation during the accrual period. The tax basis is determined by adding to the initial public offering price on such Discounted Obligation the sum of the amounts which have been treated as original issue discount for such purposes during all prior periods. If a Discounted Obligation is sold between semiannual compounding dates, original issue discount which would have been accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

The Code contains additional provisions relating to the accrual of original issue discount in the case of owners of a Discounted Obligation who purchase such Discounted Obligations after the initial offering. Owners of Discounted Obligations including purchasers of the Discounted Obligations in the secondary market should consult their own tax advisors with respect to the determination for federal income tax purposes of original issue discount accrued with respect to such obligations as of any date and with respect to the state and local tax consequences of owning a Discounted Obligation.

*Tax Treatment of Bond Premium*. The Series 2020B Bonds that have an original yield below their interest rate, as shown on the inside cover page of this Official Statement, are being sold at a premium (collectively, the "Premium Obligations"). An amount equal to the excess of the issue price of a Premium Obligation over its stated redemption price at maturity constitutes premium on such Premium Obligation. An initial purchaser of such Premium Obligation must amortize any premium over such Premium Obligations's term using constant yield principles, based on the purchaser's yield to maturity (or, in the case of Premium Obligations callable prior to their maturity, by amortizing the premium to the call date, based upon the purchaser's yield to the call date and giving effect to any call premium). As premium is amortized, it offsets the interest allocable to the corresponding payment period and the purchaser's basis in such Premium Obligation is reduced by a corresponding amount resulting in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Obligation prior to its maturity. Even though the purchaser's basis may be reduced, no federal income tax deduction is allowed. The same treatment is afforded to the Premium Obligations purchased at a premium in the secondary market. Purchasers of Premium Obligations should consult with their own tax advisors with respect to the determination and treatment of amortizable premium for federal income tax purposes and with respect to the state and local tax consequences of owning such Premium Obligations.

*State, Local or Foreign Taxation.* No representations are made regarding the tax consequences of purchase, ownership or disposition of the Series 2020B Bonds under the tax laws of any state, locality or foreign jurisdiction. Investors considering an investment in the Series 2020B Bonds should consult their own tax advisors regarding such tax consequences.

*Tax-Exempt Investors.* In general, an entity which is exempt from federal income tax under the provisions of Section 501 of the Code is subject to tax on its unrelated business taxable income. An unrelated trade or business

is any trade or business which is not substantially related to the purpose which forms the basis for such entity's exemption. However, under the provisions of Section 512 of the Code, interest may be excluded from the calculation of unrelated business taxable income unless the obligation which gave rise to such interest is subject to acquisition indebtedness. Therefore, except to the extent any Owner of a Series 2020B Bond incurs acquisition indebtedness with respect to a Series 2020B Bond, interest paid or accrued with respect to such Owner may be excluded by such tax-exempt Owner from the calculation of unrelated business taxable income. Each potential tax-exempt Owner of a Series 2020B Bond is urged to consult its own tax advisor regarding the application of these provisions.

#### Changes in Federal and State Tax Law.

From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to under this heading "TAX MATTERS" or adversely affect the market value of the Series 2020 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to Series 2020 Bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Series 2020 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Series 2020 Bonds or the market value thereof would be impacted thereby. Purchasers of the Series 2020 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based on existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2020 Bonds, and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigatiory initiatives or litigation.

PROSPECTIVE PURCHASERS OF THE SERIES 2020 BONDS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS PRIOR TO ANY PURCHASE OF THE SERIES 2020 BONDS AS TO THE IMPACT OF THE CODE UPON THEIR ACQUISITION, HOLDING OR DISPOSITION OF THE SERIES 2020 BONDS.

# RATINGS

The Series 2020 Bonds have been assigned ratings of "Baa2" (positive) by Moody's and "A-" (stable) by Fitch. The respective ratings of Moody's and Fitch reflect only the views of such organizations and any desired explanation of the significance of such ratings should be obtained from the applicable rating agency furnishing the same at the following address: Moody's Investors Service, Inc., 7 World Trade Center at 250 Greenwich Street, New York, New York 10007 and Fitch Ratings, Inc., 33 Whitehall Street, New York, New York 10004. Generally, a rating agency bases its rating on information and materials furnished to it and on investigations, studies and assumptions by such rating agency. A rating is not a recommendation to buy, sell or hold the Series 2020 Bonds. There is no assurance that such ratings will continue for any given period of time or will not be revised downward, suspended or withdrawn entirely by a rating agency, if, in its judgment, circumstances so warrant. Any such lowering, suspension or withdrawal of a rating might have an adverse effect upon the market price or marketability of the Series 2020 Bonds. The Underwriters, the Issuer and the Company undertake no responsibility after the issuance of the Series 2020 Bonds to assure the maintenance of the rating or to oppose any revision or withdrawal thereof.

#### UNDERWRITING

The Series 2020 Bonds are being sold at an aggregate purchase price of \$377,124,471.20, representing that (a) the Series 2020A Bonds are being sold at an aggregate purchase price of \$371,291,266.40 (representing the \$304,820,000.00 aggregate original principal amount of the Series 2020A Bonds plus original issue premium of \$66,471,266.40) and (b) the Series 2020B Bonds are being sold at an aggregate purchase price of \$5,833,204.80 (representing the \$6,965,000.00 aggregate original principal amount of the Series 2020B Bonds less an underwriting discount of \$1,131,795.20), to the Underwriters pursuant to a bond purchase agreement entered into among BofA Securities, Inc., as representative for the Underwriters, the Issuer and the Company (the "Bond Purchase Agreement"). The expenses associated with the issuance of the Series 2020 Bonds are being paid by the Company from proceeds of the Series 2020 Bonds and other available funds. The right of the Underwriters to receive compensation in connection with the Series 2020 Bonds is contingent upon the actual sale and delivery of the Series 2020 Bonds. The Underwriters will initially offer the Series 2020 Bonds for sale at the prices or yields set forth on the inside cover of this Official Statement. Such prices or yields may subsequently change. The Underwriters reserve the right to join with dealers and other investment banking firms in offering the Series 2020 Bonds for sale. The obligation of the Underwriters to purchase the Series 2020 Bonds is subject to satisfaction of conditions precedent set forth in the Bond Purchase Agreement.

BofA Securities, Inc., an underwriter of the Series 2020 Bonds, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"). As part of this arrangement, BofA Securities, Inc. may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA Securities, Inc. may compensate MLPF&S as a dealer for their selling efforts with respect to the Series 2020 Bonds.

Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Bank, National Association, which conducts its municipal securities sales, trading and underwriting operations through the Wells Fargo Bank, NA Municipal Finance Group, a separately identifiable department of Wells Fargo Bank, National Association, registered with the Securities and Exchange Commission as a municipal securities dealer pursuant to Section 15B(a) of the Securities Exchange Act of 1934.

Wells Fargo Bank, National Association, acting through its Municipal Finance Group ("WFBNA"), one of the underwriters of the Series 2020 Bonds, has entered into an agreement (the "WFA Distribution Agreement") with its affiliate, Wells Fargo Clearing Services, LLC (which uses the trade name "Wells Fargo Advisors") ("WFA"), for the distribution of certain municipal securities offerings, including the Series 2020 Bonds. Pursuant to the WFA Distribution Agreement, WFBNA will share a portion of its underwriting or remarketing agent compensation, as applicable, with respect to the Series 2020 Bonds with WFA. WFBNA has also entered into an agreement (the "WFSLLC Distribution Agreement") with its affiliate Wells Fargo Securities, LLC ("WFSLLC"), for the distribution of municipal securities offerings, including the Series 2020 Bonds. Pursuant to the WFSLLC Distribution Agreement, WFBNA pays a portion of WFSLLC's expenses based on its municipal securities transactions. WFBNA, WFSLLC, and WFA are each wholly-owned subsidiaries of Wells Fargo & Company.

# FINANCIAL ADVISOR TO THE COMPANY

Agentis Capital Advisors ("Agentis") has acted as financial advisor to the Company in connection with certain aspects of the issuance of the Series 2020 Bonds. Agentis has provided advice on the plan of finance and structure of the transaction and has not been engaged, nor has it undertaken, to make an independent verification or to guarantee the accuracy, completeness or fairness of the information contained in this Official Statement.

Agentis has provided the following sentence for inclusion in this Official Statement. Agentis has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the Company and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but Agentis does not guarantee the accuracy or completeness of such information.

THB Advisory LLC ("THB") has been retained by the Company as its "independent registered municipal advisor" (as defined in SEC Rule 15Ba1-1) (the "IRMA") to provide certain financial advisory services in connection with the issuance of the Series 2020 Bonds. THB has not been engaged, nor has it undertaken, to independently verify or to guarantee the accuracy, completeness or fairness of the information set forth in this Official Statement. THB is the IRMA and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities and therefore, will not participate in the underwriting of the Series 2020 Bonds. THB's compensation is dependent on the issuance of the Series 2020 Bonds.

THB has provided the following sentence for inclusion in this Official Statement. THB has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the Company and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but THB does not guarantee the accuracy or completeness of such information.

# MISCELLANEOUS

# **Registration of Bonds**

Registration or qualification of the offer and sale of the Series 2020 Bonds (as distinguished from registration of the ownership of the Series 2020 Bonds) is not required under the federal Securities Act of 1933, as amended, or the Colorado Securities Act, as amended. The Issuer assumes no responsibility for the qualification or registration of the Series 2020 Bonds for sale under the securities laws of any jurisdiction in which the Series 2020 Bonds may be sold, assigned, pledged, hypothecated or otherwise transferred.

#### **Additional Information**

Copies of any of the documents referenced or summarized herein will be available following the date of issuance of the Series 2020 Bonds, upon delivery of a written request, and the payment of reasonable copying, mailing and handling charges, to the Trustee.

#### Authorization

The preparation of this Official Statement and its distribution has been authorized by the Company. This Official Statement is not to be construed as an agreement or contract between the Issuer or the Company and any purchaser, owner or holder of any Series 2020 Bond.

# DENVER TRANSIT PARTNERS, LLC

/s/

By:

Title: Chief Executive Officer

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# APPENDIX A

THE REGIONAL TRANSPORTATION DISTRICT

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#### GENERAL

#### Organization

The Regional Transportation District (the "District" or "RTD") was created in 1969 by the State General Assembly as a mass transportation planning agency for the Denver metropolitan area. RTD is a public body politic and corporate and a political subdivision of the State, organized and existing under the terms of the Act. In 1974, the Act was amended, and RTD became an operating entity charged with the responsibility for developing, maintaining and operating a mass transportation system (the "System") for the benefit of the inhabitants in its service area. The RTD service area encompasses portions of an eight-county region comprising the Denver metropolitan area.

Pursuant to the Act, in September 1973, the voters of RTD authorized RTD to issue bonds for the purpose of developing a public multi-modal mass transportation system for RTD, such bonds to be payable from the proceeds of a District-wide sales tax. Thereafter, RTD began negotiations for the acquisition of the existing public and private transit operations throughout the District. By the end of 1976, RTD had consolidated seven public and private transit systems into a single system. The largest of these systems, Denver Metro Transit, owned by the City and County of Denver, was acquired in 1974. RTD's area consists of the City and County of Denver, most of the City and County of Broomfield, the Counties of Boulder and Jefferson, the western portions of Adams and Arapahoe Counties, the southwestern portions of Weld County, and the northeastern and Highlands Ranch areas of Douglas County. RTD currently services 2,342 square miles and 40 cities and towns. Over 3.2 million people, approximately 57% of the population of the State, reside within the District. The legislature can provide for elections within RTD's boundaries that, if successful, add territory to RTD. Territory may also be added to the District in certain circumstances by petition of the owners of the land sought to be included in the District or by a petition followed by an election held in the area sought to be included in the District. See "RTD SERVICE AREA AND DIRECTOR DISTRICTS MAP."

In June 2020 State officials formed an RTD Accountability Committee in partnership with members of the RTD Board of Directors. The mission of the Committee is to provide feedback and a set of recommendations to RTD for financial operational and governance improvement. This is an independent Committee of 11 people with diverse backgrounds and expertise selected by the Colorado Governor (5 members) and the State legislature (6 members). The group is expected to complete its work and present a final report to state officials and the RTD Board by July 2021. Among the areas the Committee will review include the following:

• Recent financials from the District including any recent audits and a thorough review of the District's use of federal CARES Act funds.

• Structure of RTD governance and executive leadership.

• The District's short-term and long-term prioritization of resources to maximize the District's limited dollars for the benefit of taxpayers.

• How RTD can better serve all riders including those with disabilities, how it can better serve transitdependent populations, a review of the District's plans for how to expand ridership, how the District is addressing coverage gaps, how the District is prioritizing route planning, and how the District is serving its entire service area.

• A determination of the long-range financial stability of the District, and how the District can achieve stability and growth while still meeting its core mission.

• The Committee met for the first time on Monday, August 10, 2020 in a virtual meeting facilitated by the Denver Regional Council of Governments ("DRCOG").

#### Powers

As described under "THE DISTRICT SALES TAX," the District has the power to impose certain sales taxes. Under the Act, RTD can use sales tax revenues to pay the costs of operations of RTD, to defray the cost of capital projects, to pay the principal of and premium and interest on securities of RTD and to pay amounts due in connection with financial products and credit agreements of RTD.

Since RTD is an entity created by statute, its powers are susceptible to changes in statute. In particular, because current legislation requires the sales tax imposed by RTD to be imposed upon the same transactions or incidents with respect to which the State imposes a sales tax, with certain exceptions, RTD is unable to prevent the State from enacting exemptions that would diminish its tax base. However, when the State enacted significant new sales tax exemptions in 1983, it also increased RTD's sales tax rate. Historically, legislation that has broadened State sales tax exemptions has allowed RTD to continue to collect sales tax on such transactions.

RTD, with voter approval, also has the power to levy and cause to be collected general ad valorem taxes not to exceed one-half of one mill on all taxable property within RTD whenever RTD anticipates a deficit in operating or maintenance expenses. See "FINANCIAL INFORMATION CONCERNING RTD – Major Revenue Sources" and "CONSTITUTIONAL REVENUE, SPENDING AND DEBT LIMITATIONS." Although the Act allows RTD to levy this tax, RTD has not exercised its power to levy a general ad valorem property tax since 1976, and has no present intention of doing so in the reasonably foreseeable future. Voter approval would be required to levy such a tax pursuant to the Colorado Constitution. See "CONSTITUTIONAL REVENUE, SPENDING AND DEBT LIMITATIONS."

RTD also has the power to increase or decrease the fares for services and facilities provided by RTD; sue and be sued; purchase, trade, maintain and dispose of its real property and personal property; condemn property for public use; accept grants and loans from the federal government; establish, maintain and operate a mass transportation system and all the necessary facilities relating to such system; and exercise all rights and powers necessary or incidental to, or implied from, its specific powers.

#### **Board of Directors**

RTD is governed by a fifteen-member elected Board of Directors (the "Board") with each member elected from one of the fifteen districts (the "Director Districts") comprising RTD's geographical area. After each federal census the fifteen Director Districts are apportioned so that each Director District represents, to the extent practicable, one-fifteenth of the total population in RTD's geographical area.

The regular term of office for each Director is four years, with approximately one-half of the Directors being elected every two years. If a vacancy arises on the Board, which vacancy can occur if a Director from one Director District changes his or her residence to a place outside the Director District, or if a Director resigns, or if a Director is recalled from office by the electors of the Director District, the vacancy is to be filled by appointment for the balance of the term by the board of county commissioners of the county where the Director District is located or, in the case of a Director elected in Denver, by the Mayor of the City and County of Denver with the approval of the City Council of the City and County of Denver. If the vacancy occurs in a Director District that crosses county boundaries, the vacancy is to be filled by an appointee of the board of county commissioners of the county wherein the largest number of registered electors of the Director District reside; however, if the largest number of registered electors reside in the City and County of Denver, with the approval of the City Council of the City and County of Denver, the Mayor of the City and County of Denver, with the approval of the City Council of the City and County of Denver, the Mayor of the City and County of Denver, with the approval of the City Council of the City and County of Denver, the Mayor of the City and County of Denver, with the approval of the City Council of the City and County of Denver, is to appoint someone to fill the vacancy.

The Board has the authority to exercise all the powers, duties, functions, rights and privileges vested in RTD, including the power to delegate executive and administrative powers to officers and employees of RTD. Most actions of the Board require the affirmative vote of a majority of the Board. Legislation enacted in the 1990 session of the State General Assembly requires an affirmative vote of two-thirds of the Board to approve any action relating to the authorization of the construction of a fixed-guideway mass-transit system and prohibits the Board from taking any such action until such systems have been approved by the metropolitan planning organization, currently DRCOG.

#### The members of the Board are as follows:

#### **Current Board of Directors**

Name	<u>District</u>	Expiration of Present Term (December 31)	Occupation
Angie Rivera-Malpiede, Chair	District C	2022	VP at Foundation for Sustainable Urban Communities
Margaret "Peggy" Catlin, First Vice Chair	District N	2022	Small Business Owner
Shelley Cook, Second Vice Chair	District L	2022	Non-Profit Professional
Vince Buzek, Secretary	District J	2020	Attorney
Lynn Guissinger, Treasurer	District O	2022	Small Business Owner
Bob Broom	District F	2020	Retired Investment Banker
Claudia Folska, Ph.D.	District E	2020	Architectural Planning and Design Consultant
Shontel Lewis	District B	2022	Associate Director at Denver Public Schools
Judy Lubow	District I	2020	Retired Government Attorney
Natalie Menten	District M	2020	Family Business Owner
Ken Mihalik	District G	2020	Aerospace Contractor
Doug Tisdale	District H	2020	Attorney
Jeff Walker	District D	2020	Utilities Manager
Troy Whitmore	District K	2022	Public Affairs Officer
Kate Williams	District A	2020	Non-Profit Professional

#### **Principal Officials**

The following is a list of the current administrative and management personnel most involved in the management of RTD, their background and experience, and a description of their jobs:

**Debra Johnson – Chief Executive Officer and General Manager**. Ms. Johnson assumed the role of General Manager and CEO of RTD on November 9, 2020. Ms. Johnson is a transit executive with more than 25 years of diversified, progressively responsible experience and most recently served as Deputy CEO of Long Beach Transit in Long Beach, California. She has held executive positions at the Washington Metropolitan Area Transit Authority (WMATA), the San Francisco Municipal Transportation Agency (SFMTA) and the Los Angeles County Metropolitan Transportation Authority (LA Metro).

*Mr. Doug MacLeod – Acting Chief Financial Officer*. Mr. MacLeod was appointed as the Acting Chief Financial Officer in November 2020. As the RTD Acting Chief Financial Officer, he directs the activities of the following divisions: Finance, Treasury, Human Resources and Information Technology. Mr. MacLeod has 29 years of experience in finance and accounting in both the private and public sector with 10 years at RTD, most recently as the Controller. Mr. MacLeod has an undergraduate degree in Accounting from Fort Lewis College and an MBA in Finance and Accounting from Regis University. He also has an active Certified Public Accountant license with the state of Colorado. Mr. MacLeod is replacing Ms. Heather McKillop who resigned effective November 18, 2020 to take a new position at a different transit agency.

*Melanie J. Snyder – General Counsel.* Ms. Snyder began her role as RTD General Counsel in June 2020. Ms. Snyder has over 15 years of experience representing a variety of clients in both the public and private sectors. As RTD General Counsel, she advises the Chief Executive Officer and General Manager and elected Board of Directors, and oversees the Legal Services, Risk Management, and Information Governance Management Divisions. Ms. Snyder previously served as Chief Deputy Attorney General and Chief of Staff overseeing the management of the largest law firm in the State of Colorado. Prior to joining the Attorney General's Office, Ms. Snyder practiced commercial litigation at large and small Denver firms. She received her J.D. from the University of San Diego School of Law and B.A. degrees in Political Science and Psychology from the University of Arizona. *Mr. Michael Ford – Chief Operations Officer*. Mr. Ford was appointed to the newly created position of Chief Operations Officer on January 29, 2018, and brings a lifetime commitment to regional, local and individual mobility. Mr. Ford's innovative approaches to service delivery and commitment to mobility for all citizens have been instrumental in achieving success leading transportation organizations in the Northwest, California, and Michigan. While CEO for the Ann Arbor Transportation Authority, the organization garnered national attention for the fourth highest growth in ridership, launching new services and securing new funding with overwhelming community support at the ballot box. The breadth of Mr. Ford's over 30 years of experience in public and private transportation includes properties from the Northwest to the Midwest; providing service through multiple transportation modes including, but not limited to, light rail, streetcar, fixed route service, ADA, specialized shuttles and commuter rail. Mr. Ford is originally from Seattle, Washington and holds a Master of Business Administration degree from City University in Seattle and a Bachelor of Arts degree in Philosophy and Sociology from Pacific University in Forest Grove, Oregon. As the RTD Chief Operations Officer he directs the activities of the following divisions: Bus Operations, Rail Operations, ADA Paratransit Services, Service Planning and Development.

*Mr. Mike Meader – Assistant General Manager, Safety, Security, and Asset Management.* Mr. Meader has over 20 years of executive level experience developing policy and leading safety and security programs. He has broad-based experience in strategic planning, performance management, asset management, and performance improvement. Prior to joining RTD, Mr. Meader worked for Qognify Security where he was responsible for the development and strategic leadership of transportation safety, security and operational/asset management technology solutions. He has worked with transit systems across the United States and has presented at national conferences. Prior to Qognify, Mr. Meader worked for the Cintas Corporation at the executive level. Mr. Meader is a graduate of the United States Air Force Academy where he was class president and served as a Safety Officer/Aircraft Commander and Instructor Pilot for the US Air Force for nine years. Mr. Meader has a bachelor's degree in mechanical engineering from the Air Force Academy and a Master of Business Administration from the University of Colorado.

*Mr. Bill Van Meter – Assistant General Manager, Planning.* Mr. Van Meter was appointed to the position of Assistant General Manager, Planning for the District in April 2010 after being appointed as Acting Assistant General Manager, Planning in September 2008. Mr. Van Meter has over 25 years of experience in the transportation planning field, with extensive experience in public transit and roadway planning, managing multi-modal transportation studies, and Federal Transit Administration New Starts and Small Starts grant funding programs. Mr. Van Meter has been with RTD since 1991, and prior to his appointment to his current position, he held progressively responsible positions at RTD, most recently in the position of Senior Manager of Systems Planning. Prior to his employment with RTD, Mr. Van Meter was employed as a transportation planner with the South Central Regional Council of Governments in Connecticut. He holds bachelor's and master's degrees in Economic Geography from the University of Illinois at Urbana-Champaign.

*Mr. Henry Stopplecamp, P.E. – Assistant General Manager, Capital Programs.* Mr. Stopplecamp was appointed to Assistant General Manager, Capital Programs in 2015 and is responsible for all aspects of FasTracks, including fixed guideway design and construction support for light rail, commuter rail corridors and the required freight railroad relocation along with bus infrastructure requirements. Mr. Stopplecamp is a graduate of Montana State University with undergraduate and graduate degrees in Civil Engineering. He is currently registered as a Professional Engineer in the state of Colorado. Prior to his career at RTD, Mr. Stopplecamp worked for the Burlington Northern Santa Fe ("BNSF") railroad handling wastewater treatment operations, large-scale remediation projects, emergency response, and track construction and maintenance. Over the last nineteen years with RTD, he has worked on all capital expansion projects from the Southwest Rail Corridor through FasTracks. Mr. Stopplecamp led the technical portion of the right-of-way acquisition for FasTracks from the BNSF and Union Pacific railroads. He is currently an integral part of the FasTracks program providing oversight and support to the program along with supporting RTD with ongoing Base System (as defined herein) projects.

*Mr. Dave Jensen – Assistant General Manager, Rail Operations*. With over 30 years of management experience, Mr. Jensen began his rail career in 1987 and supervisory/management career in 1989. Mr. Jensen was appointed to Assistant General Manager, Rail Operations in 2018. Mr. Jensen's experience includes rail systems management, rail performance and needs assessments, team building, training needs assessments, training course development, and management. He has provided consultation and assistance to numerous transit agencies in the United States and internationally, including properties in Hong Kong, Canada, Argentina, Los Angeles, Salt Lake City, Washington D.C., New Jersey, Houston and Virginia. Mr. Jensen has experience as an auditor for peer reviews for

APTA. He has provided certifications, training and consultation to streetcar new start agencies in Kansas City, Cincinnati and Detroit. He has testified in numerous court cases as an expert witness and "person most knowledgeable" on light rail operations, rules, policies, procedures and training. Mr. Jensen earned the U.S. Department of Transportation Transit Safety and Security (TSSP) certification in 2017. Mr. Jensen is also certified by the following FTA courses and certified as an instructor in 2015: "Transit Rail System Safety," "FTA Instructor's Course," "Effectively Managing Transit Emergencies," "Rail Transit Incident Investigation," "SMS Principles for Transit," and "Transit System Security."

*Mr. Fred Worthen – Assistant General Manager, Bus Operations*. Mr. Worthen began his role as Assistant General Manager, Bus Operations in 2018. He has over 18 years of management experience of transit systems, and over 30 years' experience in transportation operations and service planning, including fixed route services, maintenance, operations training, contracted transportation services, alternative transportation services and special transit services. Prior to joining RTD, Mr. Worthen served as the Director of Transportation for Washington State Community Transit in the State of Washington and Assistant Director of Administrative Operations for the Capital Metropolitan Transportation Authority in Austin, Texas. He earned a Bachelor of Science in political science with an emphasis in Urban Studies at Texas A&M University.

*Ms. Pauletta Tonilas – Assistant General Manager, Communications.* Ms. Tonilas began her role as Assistant General Manager, Communications in February 2019. She recently returned to RTD, having previously served the agency for 12 years as Senior Manager of Public Relations, Public Information Manager for the FasTracks program, and Public Information Manager for the T-REX light rail/highway expansion project. Pauletta has over 30 years of experience in all facets of communications, and, in her current role, oversees the following divisions: Community Engagement, Customer Care, Digital Communications, Government Relations, Marketing, Market Development, Market Research, Project Outreach, Public Relations and Special Events. Before returning to RTD, Pauletta served as Chief Communications Officer at the Los Angeles County Metropolitan Transportation Authority – LA Metro – where she led all Metro's communications efforts including the public education program that contributed to the successful passage of the Measure M transportation sales tax ballot measure in 2016. During her career, Pauletta also served as Public Information Officer for the City of Englewood, Colorado, and spent nine years as a television news anchor and reporter. She earned a Bachelor of Arts in Journalism at Colorado State University, is a Denver native, and the proud recipient of the 2009 WTS Colorado Woman of the Year Award.

#### **Employee and Labor Relations**

As of December 31, 2019, RTD employed over 2,888 persons of whom about 2,018 are represented by Local 1001 of the Amalgamated Transit Union (the "**Union**"), which bargains collectively on behalf of these employees. The Union members operate the bus and rail services and provide other administrative services. On March 1, 2018, RTD and the Union entered into a three-year collective bargaining agreement which expires in 2021. This agreement automatically continues year to year unless either party provides advance notice. RTD and Union leadership are currently in active negotiations on various issues. In addition to District employees, approximately 2,058 non-District employees provide contracted services including commuter-rail, fixed-route bus, and paratransit services.

#### **Retirement Plans**

Pension/retirement plans have been established covering substantially all of RTD's employees. Unionrepresented employees participate in a pension trust, established through a collective bargaining agreement, and administered by a Board of Trustees representing both the Union and RTD. Both RTD and the employees contribute to this plan (the "**Union Plan**"). As of the actuarial valuation date of December 31, 2019, the Union Plan had a net pension liability of \$268 million as described in Note F to the 2019 Comprehensive Annual Financial Report attached as Appendix A-1 hereto. The funded ratio of the actuarial value of assets to the actuarial accrued liability for the Union Plan was 43.9%. The actuarial valuations have been performed by Gabriel Roeder Smith & Company for the Union Plan. Under the current collective bargaining agreement, RTD is required to contribute 13% (and the employees to contribute 5%) of eligible employee's qualifying wages to the Union Plan respectively for the years 2018 through 2020. In addition to the 13% contribution, RTD also contributes a lump sum in each of the three years of the collective bargaining agreement of \$6.2 million pursuant to the terms of such agreement. RTD's contribution obligations under the Union Plan are based on the current collective bargaining agreement and are limited to its negotiated contributions to the defined benefit plan. RTD is current with respect to those negotiated contributions. The collective bargaining agreement expires February 28, 2021. It is unknown if RTD's contribution to the Union Plan under any subsequent collective bargaining agreement will change and whether such a change will impact, if at all, the financial position of RTD. See "Employee and Labor Relations" under this caption. It is anticipated that in the future increased contributions will need to be made by RTD to the Union Plan to permit the Union Plan to meet its obligations.

Non-represented salaried personnel hired prior to January 1, 2008 are covered under a non-contributory defined benefit plan to which RTD contributed to the plan annually as described below (the "Salaried Pension Plan"). Through 2008, the amounts contributed by RTD fully funded the Salaried Pension Plan. Due to the loss in investments in the Salaried Pension Plan starting in 2009 caused by the recession, the actuary recommended contributions of percentages higher than 9% of payroll costs in years 2010, 2011 and 2012. Accordingly, the 9% of payroll costs contributions made by RTD to the Salaried Pension Plan during those years were less than the actuarially recommended amounts. Beginning in 2013, RTD contributed a fixed dollar amount of \$3.1 million to the Salaried Pension Plan, rather than a percentage of payroll costs. The \$3.1 million was the RTD contribution for 2013, 2014, and 2015. For 2016, the actuarial recommended contribution was \$6.77 million due to increases in salaries and decreases in the annual rate of return on investments. RTD did not contribute the \$6.77 million but did raise its contribution to \$4.1 million for 2016. For 2017, the actuarial recommended contribution was \$7.63 million. RTD contributed \$4.6 million in 2017. For 2018, the actuarial recommended contribution was \$7.3 million and RTD contributed \$5.1 million. In 2019, the actuarial recommended contribution is \$8.0 million, and RTD contributed \$5.1 million. In 2020, the actuarial recommended contribution is \$8.1 million, and RTD has budgeted to contribute \$6.1 million. In 2021, the actuarial recommended contribution is \$8.6 million, and RTD plans to contribute \$6.1 million. The Salaried Pension Plan is qualified with the Internal Revenue Service. As of the actuarial valuation date of December 31, 2019, the funded ratio of the actuarial value of assets to the actuarial accrued liability for the Salaried Pension Plan was 71.8%. The actuarial valuation for the Salaried Pension Plan was performed by Rael & Letson. For further information regarding the District's Salaried Pension Plan, see Note F to the 2019 Comprehensive Annual Financial Report attached as Appendix A-1 hereto. It is anticipated that in the future increased contributions will need to be made by RTD to the Salaried Pension Plan to permit the Salaried Pension Plan to meet its obligations.

Non-represented salaried personnel hired on or after January 1, 2008 are covered under a non-contributory defined contribution plan providing for a 7% to 9% contribution by RTD based on the earnings of the employee. The Board adopts a percentage amount for contribution each year. RTD closed the Salaried Pension Plan to non-represented salaried personnel hired on or after January 1, 2008 and initiated this defined contribution plan to ensure the long-term fiscal soundness of both plans while controlling the cost of pension benefits. RTD also has a deferred compensation plan, created in accordance with §457 of the Internal Revenue Code of 1986, as amended, which is available to substantially all employees and permits employees to defer a portion of their compensation to future years.

#### **Other Postemployment Benefits**

The District is not presently obligated to contribute funds towards Other Postemployment Benefits ("**OPEBs**") for any of its employees and therefore does not have an unfunded liability relating to OPEBs.

#### Insurance

Under the provisions of the Colorado Governmental Immunity Act, the maximum liability to RTD for a personal injury claim is \$387,000 per person, or \$1,093,000 per occurrence, under the current law. However, RTD may be unable to rely upon the defense of governmental immunity and might be subject to liability in excess of the maximum limits established by the Colorado Governmental Immunity Act in the event of suits alleging causes of action founded upon various federal laws, such as suits filed pursuant to 42 U.S.C. Section 1983 alleging the deprivation of federal constitutional or statutory rights of an individual and suits alleging anti-competitive practices and violation of the anti-trust laws by RTD in the exercise of its delegated powers. See "GOVERNMENTAL IMMUNITY."

RTD maintains an excess liability policy with limits of \$50 million and a self-insured retention of \$1,000,000. Coverage under this policy includes bodily injury, personal and advertising injury, public officials' liability and property damage. However, RTD maintains higher limits on portions of railroad rights of way that it owns or to which it has operating rights. Additionally, RTD carries an all risk property policy on its assets with a per occurrence limit of \$500 million and a \$100,000 deductible.

RTD's policy is to recognize claims as they arise, not when they are resolved. RTD anticipates claims by budgeting the expected losses in the current year, including an actuarially determined amount for "Incurred But Not Reported" ("IBNR") claims; such amounts are reflected as liabilities in RTD's comprehensive annual financial reports. For 2019, RTD recognized insurance costs of \$10.8 million. RTD maintained reserve funds for existing liabilities (as of December 31, 2019) in the amount of \$4.9 million and workers' compensation claims (as of December 31, 2019) in the amount of \$4.9 million.

#### **Intergovernmental Agreements**

Under State law, intergovernmental relationships and agreements are permitted among political subdivisions, agencies, departments of the United States, the State and any political subdivision of an adjoining state. Governments may cooperate or contract with one another for the provision of any function, service or facility that each of them is authorized to provide separately. At any given time, RTD has numerous intergovernmental agreements ("IGAs") for various purposes with municipalities, the State or its agencies such as the Department of Transportation, and the federal government, particularly the Federal Transit Administration ("FTA"). The District has signed IGAs with the various municipalities, counties and other governmental bodies concerning the design, construction, operation and maintenance of RTD's light rail, commuter rail, and bus rapid transit corridors and extensions. See "THE SYSTEM - FasTracks - FasTracks Corridors." The terms of the IGAs govern permitting, plan review, use of public rights-ofway and crossings. RTD also entered into an IGA with the Colorado Department of Transportation ("CDOT") and the Colorado High-Performance Transportation Enterprise ("HPTE") in relation to the construction and management of the managed lanes from Federal Boulevard to Table Mesa along U.S. 36. See "THE SYSTEM - FasTracks -FasTracks Corridors - Flatiron Flyer (U.S. 36 Bus Rapid Transit Corridor."). Agreements with FTA usually involve grant funding and application of grant funds. Other than full funding grant agreements with FTA and annual grant agreements with FTA for Section 5307 funds and Section 5337 State of Good Repair funding, no other financially or operationally significant IGAs with FTA exist at this time.

#### Cybersecurity

RTD recognizes that cyber security threats create risk to the organization's short-term financial stability/liquidity and long-term health. This risk is managed by the Cyber Security Division which monitors, reports and researches cybersecurity attacks on the organization, performs risk assessment, provides cybersecurity planning and sets vendor requirements for new procurements. RTD maintains cybersecurity Policies and Procedures which include topics such as computer system and network configuration, electronic data protection and cybersecurity incident response. RTD maintains strong controls, procedures and a well-trained staff to identify these attacks. Annual cybersecurity training for all RTD employees who are computer users is mandatory.

#### **Financial Statements**

The financial statements of RTD for the years ended December 31, 2019 and 2018, included in Appendix A-1 have been audited by RubinBrown LLP, independent certified public accountants, as stated in their report appearing herein. Such financial statements represent the most current audited financial information for the District. RubinBrown LLP has agreed to the use of their name and the audited financial report for the District in this Official Statement. RubinBrown LLP has not performed any procedures with respect to any unaudited financial information of the District included in this Appendix A.

#### **Certain Considerations Relating to COVID-19**

#### General

In December 2019, a novel strain of the coronavirus (SARS-CoV-2, causing COVID-19) emerged in Wuhan, Hubei Province, China. The virus subsequently spread globally resulting in a worldwide pandemic and caused significant disruptions to the economy. The State and several governmental entities within the District have implemented various safety measures including directives for social distancing and stay-at-home orders to mitigate the spread of COVID-19. The Governor of Colorado issued the first statewide stay at home order for non-essential businesses on March 25, 2020 which was then extended through May 8, 2020. Subsequently, Colorado issued a Safer

at Home order in which businesses not designated as essential could reopen under limited conditions. With certain modifications since its initial issuance, including orders such as Safer at Home and in the Vast Greater Outdoors, Protect Our Neighbors and Dial, the Safer at Home order remains in effect in Colorado.

The extent to which COVID-19 impacts RTD's future financial condition and operations will depend on future developments that are highly uncertain and cannot be predicted with confidence, including the duration of the COVID-19 outbreak.

#### Impact on Sales Tax Collections

RTD's largest source of revenue is sales and use taxes from a 1.0% tax collected within the District. See "THE DISTRICT SALES TAX." These sales and use taxes are driven by economic activity within the District and have been negatively impacted by the COVID-19 pandemic. The impact of COVID-19 on taxable retail sales in the Denver metropolitan area and on RTD's monthly sales and use tax collections is shown in the tables below.

Taxable Retail Sales (in thousands)	City and County of Denver	Boulder County	Jefferson County	Adams County	Arapahoe County	Douglas County	City and County of Broomfield	Other	Total Taxable Transactions
January – August,									
2020 January – August,	\$9,720,300	\$3,793,300	\$6,188,400	\$6,259,500	\$7,690,200	\$2,875,800	\$947,900	\$105,900	\$37,581,300
2019	13,171,000	4,117,000	6,618,100	6,992,100	8,502,400	3,365,600	1,004,600	99,500	43,870,300
% Change	-26%	-8%	-6%	-10%	-10%	-15%	-6%	6%	-14%

# RTD Sales and Use Tax

Collections								
(in Thousands)	January	February	March	April	May	June	July	August
2020	\$49,293	\$48,223	\$43,604	\$46,315	\$49,235	\$56,393	\$55,044	\$55,653
2019	47,010	46,355	52,545	53,173	54,360	57,730	57,419	57,893
Change	\$2,283	\$1,868	\$(8,941)	\$(6,858)	\$(5,125)	\$(1,337)	\$(2,375)	\$(2,240)
% Change	4.9%	4.0%	-17.0%	-12.9%	-9.4%	-2.3%	-4.1%	-3.9%

Although RTD sales and use tax collections have rebounded since the lows experienced during the Stay at Home Order, RTD sales and use tax collections remain volatile and difficult to forecast, particularly due to the uncertain economic impact of COVID-19. RTD has budgeted sales and use tax collections for 2020 to be \$501 million, 24% lower than collections in 2019, and is budgeting \$655 million in collections for 2021, which would be a 30.7% increase from budgeted 2020 and a 0.6% reduction from actual collections of \$659 million in 2019.

#### Impact on Ridership and Fares

These COVID-19 measures have severely reduced ridership within the District, and RTD has experienced an approximate 70% reduction in ridership beginning in mid-March 2020. In response, RTD has implemented additional safety precautions for its employees and riders and has evaluated service levels, costs, and impacts to revenue. On April 5, 2020, RTD suspended the collection of fares in response to State social distancing measures and required rear-door boarding on all buses. On April 19, 2020, RTD reduced its transit services by approximately 40% to reduce costs and adjust services to the lower demand. While fare collection was suspended, RTD acquired additional Personal Protective Equipment for employees, required passengers to wear facial coverings and installed see-through shields to separate bus operators from passengers. On July 1, 2020, RTD reinstated fare collection and front door boarding on buses. The impact of COVID-19 on RTD's monthly ridership and fare revenue is shown in the tables below.

<b>Ridership (in Thousands)</b>	January	February	March	April	May	June	July	August
2020	8,733	8,283	5,991	2,899	3,108	3,492	3,415	3,489
2019	8,270	7,792	8,244	8,986	9,111	8,640	8,952	9,609
Change	463	491	(2,253)	(6,087)	(6,003)	(5,148)	(5,537)	(6,120)
% Change	5.6%	6.3%	-27.3%	-67.7%	-65.9%	-59.6%	-61.9%	-63.7%
Fare Revenue (in Thousands)	January	February	March	April	May	June	July	August
2020	\$12,205	\$11,974	\$9,801	\$854	\$(126)	) \$65	1 \$7,25	3 \$6,161
2019	11,680	11,043	12,210	12,866	13,225	5 12,48	1 13,27	5 14,684
Change	\$525	\$931	\$(2,409)	\$(12,012	) \$(13,35	1) \$(11,83	0) \$(6,022	\$(8,523)
% Change	4.5%	8.4%	-19.7%	-93.4%	-101.0%	-94.8%	6 -45.4%	6 -58.0%

RTD's ridership and fare revenue remain significantly lower than before the COVID-19 pandemic, and it is uncertain when each may begin to recover to prior levels. RTD is prepared to restore service as demand warrants. See "THE SYSTEM."

#### CARES Act Funding

RTD was awarded a \$232.3 million grant through the 2020 Coronavirus Aid, Relief and Economic Security ("CARES") Act. This funding was awarded to RTD as a means to offset the negative economic impact of COVID-19. RTD expects to draw the entirety of this grant by the end of 2020 and does not expect additional CARES funding to be available in the future.

#### Cost Reduction Measures

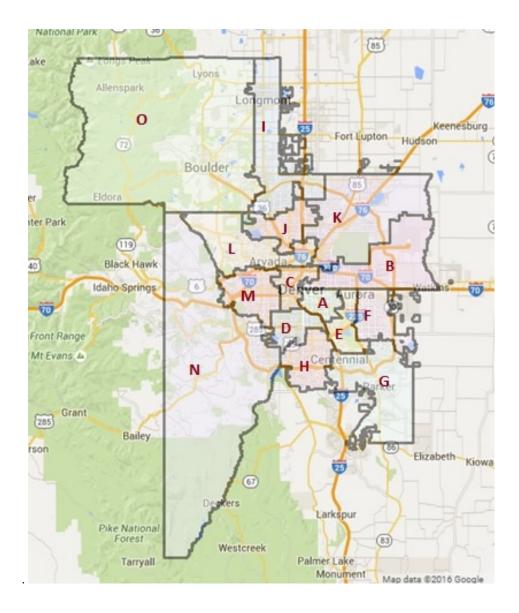
RTD has undertaken significant measures as directed by the RTD Board of Director's COVID-19 Budget Reduction Principles to reduce expenditures in 2020 in response to lower revenues including service reductions, project delays and furloughs. Additional cost reduction measures are planned including staffing reductions, additional furloughs, pay reductions for certain employees, continued deferment of projects and other measures that will primarily impact spending levels in 2021 and beyond.

# Cash and Liquidity

As of August 31, 2020, RTD had approximately \$335 million of unrestricted cash and investments, which is equal to 167 days of cash on hand. RTD also had \$381 million of restricted cash and investments.

# RTD SERVICE AREA AND DIRECTOR DISTRICTS MAP

The following map shows the service area of the District as well as the Director Districts identified as District A through District O.



#### THE SYSTEM

#### **Long-Term Financial Planning**

#### Regional Transportation Plan

The long-term goals and policies of RTD are incorporated in a plan known as the Metro Vision Regional Transportation Plan (the "**Regional Plan**"). The Regional Plan is mandated by the United States Department of Transportation which has recognized DRCOG, a voluntary association of Denver metropolitan area county and municipal governments, as the entity charged with preparing the Regional Plan. DRCOG, in coordination with the CDOT, RTD and local governments, has developed the Regional Plan to provide a coordinated system of transit and roadway improvements to meet the transportation needs of the Denver metropolitan area through the year 2040 within projected available revenues. By inclusion in the Regional Plan, RTD's capital projects may become eligible for federal assistance.

The Regional Plan includes those regional transportation facilities that can be provided through the year 2040, based on reasonably expected revenues. The Regional Plan focus is on improving facilities for a variety of transportation modes; improving the intermodal connections between the various transportation modes; and providing programs and services to support the transportation system. The Regional Plan consists of a network of highways of various roadway classifications, high occupancy vehicle and rail rapid transit facilities, bus service, specialized services for the elderly and disabled, airports of various classifications, provisions for freight travel, a regional bicycle network, sidewalks for pedestrians, and intermodal facilities to provide connections among and between transportation modes. The most recent amended 2040 Metro Vision Regional Transportation Plan was adopted by the DRCOG Board of Directors on May 15, 2019. See "FasTracks" under this caption.

DRCOG is now in the process of updating the Regional Plan to a horizon year of 2050. RTD, the Colorado Department of Transportation and local governments submitted their candidate projects for consideration to DRCOG in September 2019. DRCOG staff is now in the process of screening projects and will continue formulation of the plan through the winter. The DRCOG Board is expected to adopt the plan in the spring of 2021.

RTD typically updates its input to the Regional Plan annually through its Long Range Financial Plan. RTD's 2020 update to the Long Range Financial Plan has been suspended in order to reallocate resources to the District's COVID response. Work on the Long Range Financial Plan is expected to resume in 2021 when a plan for the 2022-2050 period will be prepared.

#### Mid-Term Financial Plan

The Mid-Term Financial Plan ("**MTFP**") is RTD's six-year capital and operating plan adopted annually by the Board in connection with the District's estimated capital and operational expenditures for all programs, including the multi-year comprehensive transit expansion plan known as "**FasTracks**". Further discussion of the planning and coordination of FasTracks expenditures are described in "FasTracks" under this caption.

The MTFP includes projections of annual service levels, the capital requirements to maintain these service levels, and the funding mechanisms through which the operating and capital programs are to be achieved. In addition, the MTFP is a component of the comprehensive six-year Transportation Improvement Program (the "**TIP**") adopted biennially by DRCOG for the Denver metropolitan area, as required by federal regulations. An RTD capital project must be included in the TIP in order to be eligible for federal funds. The six-year MTFP is revised annually by the staff and approved by the Board in response to factors such as changes in RTD's goals and objectives, strategic plans, changes in demographics and development in RTD's service area, or unforeseen circumstances affecting forecast revenues. As a result, the six-year MTFP may include substantial changes from year to year, with projects being added, deleted and modified on a regular basis.

RTD adopted the most recent MTFP on October 31, 2019, which covers the period from 2020 through 2025. The 2020-2025 MTFP contemplates that over such six-year period, RTD intends to replace a total of approximately 187 40' transit buses, 50 medium 30' transit buses, 6 intercity buses, 352 ADA cut-away buses, and 50 FlexRide cut-

away buses as they reach the end of their useful lives, and to purchase 10 cut-away buses to expand its ADA and FlexRide services. The plan also calls for the purchase of 17 electric 40' transit buses to replace existing buses reaching the end of their useful lives, with the difference in cost between these buses and diesel buses to be funded from revenues awarded to RTD by the Federal Transit Administration under the Volkswagen settlement program and the Low or No Emission Vehicle Program. Due to uncertainties caused by COVID, the RTD Board has decided to adopt a two-year Mid-term Financial Plan in 2020 and prepare its next six-year plan for the period 2022-2027 in 2021. The two-year plan was adopted by the RTD Board in November 2020.

# Financial Policies of the District

The information set forth below regarding the financial policies of the District is subject to change by the Board at any time. The financial policies speak only as of the date of this Appendix A and may be revised or updated by the District.

The District complies with the following policies when budgeting: (a) 1.20x net revenue coverage test (all annual revenues remaining after operating and maintenance expenses<sup>1</sup> to annual debt service requirements net of excess appropriations required for variable rate debt, of which RTD has none) for all outstanding<sup>2</sup> debt and annually appropriated obligations; (b) operations and maintenance, capital expenditures and certificates of participation related to operations not constituting part of the FasTracks transit expansion plan (the "**Base System**") may not be paid from the 0.4% Sales Tax (as hereinafter defined) revenues; and (c) all other appropriated payments are made from available revenues. RTD maintains a commitment to the FTA to operate federal projects in transit use for the useful life of the assets or to repay all federal dollars relating to the asset.

In December 2012, the Board approved the establishment of the FasTracks Internal Savings Account ("FISA"), into which certain funds made available by the reduction of existing budgeted items are required to be deposited to be used to fund the FasTracks program. The District also maintains a TABOR reserve in an amount equal to 3% of non-federal revenues pursuant to State statute. The District endeavors to maintain an available fund balance for the Base System equal to three months of Base System operating expenses and an available fund balance for the FasTracks system equal to three months of operating expenses in each instance excluding depreciation. See Note B to Appendix A-1 – "REGIONAL TRANSPORTATION DISTRICT DENVER, COLORADO COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED DECEMBER 31, 2019 AND 2018" for a discussion of the deposits and investments of the District. As of December 31, 2019, \$92.1 million was on deposit in the FISA.

# FasTracks Program

The District is planning and constructing the build-out of FasTracks described in "FasTracks" under this caption. Each year, as part of the MTFP process, RTD conducts a comprehensive evaluation of the entire FasTracks program. On May 15, 2019, the DRCOG Board of Directors approved the most recent amended 2040 Metro Vision Regional Transportation Plan, which includes all elements of the FasTracks program that have been completed, or are currently under construction, using currently identified revenues. RTD does not currently anticipate receiving funding to complete any additional corridors within the time horizon of the current Regional Plan. However, the Regional Plan can be further amended over time as new funding sources or additional revenues become available. See "FasTracks – FasTracks Corridors" under this caption.

# Unsolicited Proposals

A third party may, from time to time, provide an unsolicited proposal ("**Unsolicited Proposal**") to the District on its own initiative for the purpose of obtaining a contract with RTD for goods or services or with respect to real property owned by RTD. An Unsolicited Proposal to provide goods or services is distinguishable from a project that is already part of the District's long-term budget planning process if it uses innovative and unique solutions to offer added value such as enhanced financing options or materially advanced delivery dates. An Unsolicited Proposal for real property may be an offer to acquire excess District property or an offer for joint development of District property.

<sup>&</sup>lt;sup>1</sup> Includes non-TABOR portion of Service Payments

<sup>&</sup>lt;sup>2</sup> Includes TABOR portion of Service Payments.

The District's policies regarding Unsolicited Proposals provide that once an Unsolicited Proposal is received by the District, it is analyzed to determine whether it meets certain threshold requirements. If such threshold requirements are met, the Unsolicited Proposal is evaluated to determine whether, among other things, the proposal: (a) offers benefits to the District, its passengers, and the community; (b) can be accommodated in the District's long-term budget without displacing other planned expenditures; (c) is consistent with the District's and the Board's objectives and goals; or (d) offers unique goods and services that the District did not intend to purchase through the normal contract process. If it is determined that the Unsolicited Proposal satisfies certain evaluation requirements, the District will (unless the Unsolicited Proposal offers a proprietary concept that is essential to contract delivery) publicize its interest in the offer, goods, or services described in the Unsolicited Proposal and seek competing proposals from all interested parties. Receipt of an Unsolicited Proposal does not obligate the District to accept the proposal is approved or selected for contract award unless and until the process described above has been undertaken by the District. The District has received and expects in the future to receive Unsolicited Proposals. All such proposals have been and will be handled as outlined herein.

#### **Fleet Composition**

As of October 1, 2020, the District operated 1,035 fixed-route transit buses (432 of which are leased to private carriers), 201 light rail vehicles, 406Access-a-Ride paratransit vehicles and Flex Ride vehicles, and 66 commuter rail vehicles (operated as part of the Eagle P3 Project as described under "THE PROJECT" in the main body of this Official Statement). The RTD fleet includes 30- and 40-foot transit coaches, 60-foot articulated coaches, over-the-road coaches, specially designed low-floor coaches for use on the 16th Street Free Mall Ride, 85-foot articulated light rail vehicles and vans and buses used for Access-a-Ride paratransit service mandated by the Americans with Disabilities Act of 1990. As of October 1, 2020, which is the most recent calculation of the RTD peak fleet requirements, the System had a peak fleet requirement (pre COVID-19 service levels) of 412 fixed-route buses and 89 light rail vehicles. For a discussion of the effect of COVID-19 on the District's operations, see "GENERAL – Certain Considerations Relating to COVID-19."

Fixed Route Bus Fleet <sup>(1)</sup> 40' Transit Coaches60' Articulated BusesIntercity Coaches16 <sup>th</sup> Street Free Mall Ride Shuttles30' Transit BusesTotal Fixed Route Bus Fleet	Number     659     116     174     36     50     1,035
Access-a-Ride Fleet <sup>(2)</sup>	343
<u>Flex Ride Fleet</u> <sup>(3)</sup>	63
Light Rail Vehicle Fleet	201
Commuter Rail	66
TOTAL ACTIVE FLEET	<u>1,708</u>

# TABLE IRTD Active Fleet as of October 1, 2020

<sup>(1)</sup> Certain vehicles in the Fixed Route Bus Fleet are owned by RTD and operated by private contractors.

<sup>(2)</sup> All paratransit vehicles are owned by RTD and operated by private contractors.

<sup>(3)</sup> All Flex Ride vehicles are owned by RTD and operated by private contractors. Source: The District.

# **Transit Services**

In order to meet the needs of the residents within RTD's geographical area, RTD provided various transit services on 146 routes as of December 31, 2019, including those operated by private contractors. RTD, upon action of its Board, has the authorization to reduce services with no other approval required. The information below describes the transit services offered by RTD as of December 31, 2019.

1. *Local* – routes operating along major streets within the Denver metropolitan area and the cities of Boulder and Longmont, making frequent stops for passengers.

2. *Limited* – routes serving high-density corridors with less frequent stops than local routes.

3. *Regional* – routes connecting outlying areas of RTD's geographical area to downtown Denver, Boulder and other employment centers.

4. *SkyRide* – routes serving Denver International Airport.

5. *Light Rail* – rail service for approximately 48 miles of light rail track as further described in "FasTracks" under this caption.

6. *16<sup>th</sup> Street Mall Shuttle* – a free shuttle service operating along the 16th Street Mall in downtown Denver.

7. *Free MetroRide* – a free bus operating along  $18^{th}$  and  $19^{th}$  Streets during weekday rush hours (5:00 a.m. - 9:00 a.m. and 2:30 p.m. - 6:35 p.m.).

8. *Access-a-Ride* – door-to-door paratransit service for people with disabilities provided under the requirements of the Americans with Disabilities Act of 1990.

9. *Flex Ride (previously called Call-n-Ride)* – curb-to-curb service that responds to passenger requests. Typically operated in lieu of fixed route service with small vehicles in areas and/or times of low demand.

10. **Special** – for example, SeniorRide – pre-scheduled trips in off-peak hours to recreational events for elderly persons in the Denver metropolitan area, and the cities of Boulder and Longmont, seven days a week; and BroncoRide – shuttle service from the Auraria campus, Federal Boulevard and select Park-n-Rides to Denver Broncos home games.

11. **Commuter Rail** – RTD began offering commuter rail service from Denver Union Station to Denver International Airport on April 22, 2016, commuter rail service from Denver Union Station to Westminster on July 25, 2016, commuter rail service from Denver Union Station to Wheat Ridge on April 26, 2019, and commuter rail service from Denver Union Station to north Adams County on September 21, 2020 See "FasTracks – FasTracks Corridors – University of Colorado A Line (East Corridor)", "– B Line (Northwest Rail Corridor)", "– G Line (Gold Line Rail Corridor)", and "– N Line (North Metro Corridor)" under this caption.

State law permits RTD to contract with private operators for the provision of up to 58% of its vehicular services. RTD complies with this requirement with 54.4% of its vehicular services currently operated by private operators.

RTD may, but currently does not, provide charter service to the extent that such service cannot be provided by private operators. Pursuant to federal regulations, charter service operated by RTD cannot interfere with its regularly scheduled services, and the rate charged by RTD must recover the fully allocated cost of operating the service. The following table shows additional operating data concerning the System as of December 31, 2019:

# TABLE IIOperating Data(As of December 31, 2019)

Total Miles	64,369,963
Passenger Stops	9,800
Number of routes	
Local	107
Regional	23
SkyRide	3
Commuter Rail	2
Light Rail	9
Downtown Circulators	2
Call-n-Ride (now called FlexRide)	3
Ridership average weekday, including Mall Shuttle	221,938
Ridership average weekday, all services	321,891
Total annual boardings, revenue service	95,041,000
Daily miles operated (average weekday)	141,621
Diesel fuel consumption, gallons (excluding purchased transportation)	5,178,000
Total active buses	1,030
Wheelchair lift equipped buses	1,030
Number of employees (actual staff)	
Salaried	870
Represented (includes part-time drivers)	2,018
Fleet requirements (during peak hours)	841
Operating facilities	7

Source: District Comprehensive Annual Financial Report for the fiscal year ended December 31, 2019.

#### Passenger, Maintenance and Administrative Facilities

Patrons who are residents within the geographical area of the District using RTD service may park at no charge in Park-n-Ride lots for up to 24 hours. Patrons residing outside of the District geographic boundaries or District residents parking for more than 24 hours must pay a nominal parking fee. By providing the Park-n-Ride lots, RTD can provide local and regional services in low-density areas and more frequent long-haul services for patrons. As of December 31, 2019, RTD had 89 Park-n-Ride lots providing a total of 36,021 parking spaces.

RTD currently owns four bus maintenance facilities. RTD also owns two light rail maintenance facilities, two administrative buildings, one commuter rail maintenance facility and three passenger terminals located throughout the District.

#### FasTracks

#### General

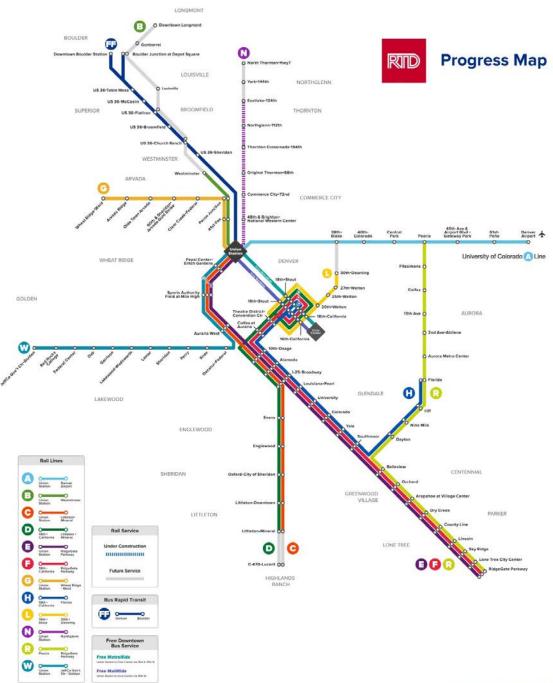
Prior to January 1, 2005, the District imposed a Sales Tax at a rate of 0.6% (the "**0.6% Sales Tax**"). At an election held on November 2, 2004 (the "**2004 Election**"), voters in the District approved a ballot question allowing for an additional 0.4% Sales Tax increase (the "**0.4% Sales Tax**" and, together with the 0.6% Sales Tax, the "**Sales Tax**" as hereinafter described) effective January 1, 2005. In connection therewith, the ballot question also authorized RTD to issue up to \$3.477 billion of additional debt obligations, with a maximum total repayment cost of \$7.129 billion and a maximum annual repayment cost of \$309.738 million, to finance FasTracks. The proceeds of the debt and the increased 0.4% Sales Tax authorized at the 2004 Election are required to be used and spent for the construction

and operation of FasTracks. At the time that all debt related to FasTracks is repaid, the District's Sales Tax rate will be reduced to a rate sufficient to operate the transit system financed through FasTracks.

In April 2004, CDOT and RTD executed an intergovernmental agreement that is intended to establish a coordinated process to facilitate the implementation of the FasTracks plan and preserve the ability to pursue planned highway and transit improvements in corridors where both highway and transit improvements are likely to occur. The Board has formally resolved to analyze the FasTracks plan annually to determine both local and federal sources of funds and adjust the corridor improvements accordingly. The Board has further resolved that construction of FasTracks improvements within a corridor are not to start until there is a firm commitment of all required funding sources and intergovernmental agreements are in place with local governments concerning permits, design and plan review.

The FasTracks program consists of nine rail corridors (new or extended); one bus rapid transit ("**BRT**") corridor; redevelopment of Denver Union Station; a new Commuter Rail Maintenance Facility ("**CRMF**") and an expanded light rail maintenance facility. At completion, the Plan will add approximately 94 miles of commuter rail (A Line, G Line, N Line and B Line); approximately 28 miles of light rail (Southeast and Southwest Corridor Extensions, Central Corridor Extension, R Line and W Line); Park-n-Ride improvements at and/or relocations of existing Park-n-Ride lots along U.S. 36 (U.S. 36 BRT – Phase 1); and 18 miles of BRT (U.S. 36 BRT – Phase 2). See "FasTracks Project Map" under this caption.

#### FasTracks Project Map



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The seven corridors and three extensions further described in "FasTracks Corridors" under this caption are currently in service.

#### FasTracks Corridors

<u>W Line (West Corridor)</u>. The W Line, formally known as the "West Corridor", line is a 12.1-mile light rail transit corridor between Denver Union Station and the Jefferson County Government Center in Golden, serving Denver, Lakewood, the Denver Federal Center, Golden and Jefferson County. In January 2009, the District was awarded a full funding grant agreement through the FTA's New Starts program for the W Line. Under the award, the District received approximately \$308.7 million. The funds were expended on the light rail line approved as part of the District's FasTracks program. The W Line opened for revenue service on April 26, 2013.

<u>Flatiron Flyer (U.S. 36 Bus Rapid Transit Corridor)</u>. The Flatiron Flyer, previously referred to as the "U.S. 36 Bus Rapid Transit Corridor", delivers 18 miles of bus rapid transit service between downtown Denver and Boulder along U.S. Highway 36. RTD entered into an IGA with CDOT and the High Performance Transportation Enterprise, which constructed managed lanes from Federal Boulevard to Table Mesa Drive along U.S. 36. RTD provided \$120 million of funding for Phase 1, from Federal Boulevard to 88th Street, and an additional \$15 million for Phase 2 from 88th Street to Table Mesa Drive. The westbound lane from Federal Boulevard to 88<sup>th</sup> Street opened to traffic on April 30, 2015, and the eastbound lane opened on May 8, 2015. Phase 2 opened at the end of 2015. RTD opened the Flatiron Flyer for service on January 3, 2016 and the managed lane opened to traffic on January 12, 2016.

<u>University of Colorado A Line (East Corridor)</u>. The University of Colorado A Line, formally referred to as the "East Corridor", is a 22.8-mile commuter rail transit corridor extending from Denver Union Station to Denver International Airport with six intermediate stations in locations throughout the City and County of Denver and the City of Aurora. The University of Colorado A Line was delivered as part of the first phase of the Eagle P3 Project described in "THE PROJECT" in the main body of this Official Statement. On August 31, 2011, the FTA granted a combined \$1.03 billion Full Funding Grant Agreement for the University of Colorado A Line and the G Line (Gold Line Rail Corridor). The University of Colorado A Line opened for revenue service on April 22, 2016 under a five-year Federal Railroad Administration waiver. For a description of this matter, see "THE PROJECT " in the main body of this Official Statement.

<u>B Line (Northwest Rail Corridor)</u>. The B Line, formally the "Northwest Rail Corridor", is a 41-mile commuter rail transit corridor between Denver Union Station and Longmont. The District will build the B Line in phases. The first phase of the B Line running from Denver Union Station to Westminster referred to as the Northwest Rail Electrified Segment opened for revenue service on July 25, 2016 under a temporary Federal Railroad Administration waiver pending final certification. The current waiver expires on September 28, 2022. For a description of this matter, see "THE PROJECT" in the main body of this Official Statement. The Northwest Rail Electrified Segment is part of the Eagle P3 Project. Construction of Phase 2 of the B Line is subject to future funding.

<u>R Line (I-225 Corridor)</u>. The R Line, which is part of the I-225 Corridor, is a 10.5-mile light rail transit extension that connects the existing I-225 Corridor with the University of Colorado A Line, and includes eight new stations, improvements to the existing I-225 Corridor, facility improvements, and equipment acquisition. The R Line opened for revenue service on February 24, 2017.

<u>G Line (Gold Line Rail Corridor)</u>. The G Line, formally referred to as the "Gold Line", is a 11.2-mile commuter rail corridor from Denver Union Station passing through northern Denver, unincorporated Adams County, the City of Arvada and the City of Wheat Ridge. On August 31, 2011 the FTA granted a combined \$1.03 billion Full Funding Grant Agreement to the G Line and the University of Colorado A Line. The G Line opened for revenue service on April 26, 2019 under the same FRA waiver as the University of Colorado A Line. For a description of this matter, see "THE PROJECT" in the main body of this Official Statement.

<u>N Line (North Metro Corridor)</u>. The N Line, formally referred to as the "North Metro Corridor", is an 18mile commuter rail transit corridor between Denver Union Station and 162nd Avenue, passing through Denver, Commerce City, Thornton, Northglenn and unincorporated Adams County. The District completed an environmental impact study ("**EIS**") for the N Line and a Record of Decision (ROD) was signed with FTA in April 2011. The ROD was rescinded in November 2014 following RTD's decision to complete the corridor without federal funding. RTD issued a Request for Proposals to design, build and finance the N Line in June 2013 following receipt and analysis of an unsolicited proposal to construct the N Line. RTD awarded a \$343 million contract to Regional Rail Partners ("**RRP**") to design and build the N Line to 124th Avenue. Design and construction on the N Line to 124th Avenue began in 2014. The N Line opened for revenue service to 124th Avenue on September 21, 2020. Construction of the N Line north of 124th Avenue is subject to future funding.

<u>Southeast Rail Extension (E, F, R Line Extension)</u>. The Southeast Rail Extension (E, F and R Line Extension) added 2.3 miles of light rail to the 19.1-mile Southeast Rail Line, extending service on the E, F, and R light rail lines to the Ridgegate station in Douglas County. RTD obtained a Small Starts Construction Grant (SSCG) of \$92 million for the Southeast Rail Extension in May 2016. RTD also received contributions from the local jurisdictions along the corridor including \$23.1 million in cash, reallocation of \$1.9 million in federal grants to the project, plus right-of-way donations, permit fee waivers, and other in-kind donations worth an additional \$3 million of the cost of the project. The Southeast Rail Extension opened for revenue service on May 17, 2019.

<u>L Line Extension (Central Rail Extension)</u>. The Central Rail Extension, known as the L Line extension, is a future light rail extension project that will improve access between and among the northeast Denver neighborhoods, the downtown transit network, and the full RTD transit system. The L Line extension will connect the L line that currently ends at the 30<sup>th</sup> and Downing Station with the University of Colorado A Line's 38<sup>th</sup> and Blake Station. This is expected to provide northeast neighborhoods with more direct access to the University of Colorado A Line, which connects Denver Union Station with Denver International Airport, while also providing University of Colorado A Line passengers and the northeast neighborhoods with a second rail connection into a different part of downtown Denver. Construction of the L Line extension is subject to future funding.

<u>Southwest Rail Extension</u>. The Southwest Light Rail Line opened in July 2000 as an 8.7-mile extension from I-25/Broadway to Mineral Avenue in Littleton. The Southwest Light Rail Line has five stations with nearly 2,600 parking spaces. The Southwest Rail Extension is a future light rail extension project that is expected to add the following to the Southwest Light Rail Line: (i) 2.5 miles of track; (ii) an end-of-line station at C-470/Lucent Boulevard; and (iii) 1,000 space Park-n-Ride facility at the end-of-line station. An intermediate station, located near the southeast corner of the C-470/US 85 Interchange is also being considered as part of this current phase of study. Completion of the Southwest Rail Extension is subject to future funding.

#### Denver Union Station

Under the FasTracks program, the existing Denver Union Station has been developed into a multimodal transportation hub, integrating light rail, commuter rail and intercity rail (Amtrak) as well as regional, limited and local bus service, the 16th Street Mall shuttle, Free Metro Ride, and intercity buses, taxis, shuttles, vans, limousines, bicycles and pedestrians (the "**DUS Project**").

In August 2001, the District completed the acquisition of Denver Union Station and certain adjacent land. The District, in cooperation with the City and County of Denver, DRCOG, and CDOT, worked together to prepare a Master Plan and an EIS for the DUS Project. The Master Plan and EIS work began in May 2002 and the Master Plan components were approved by all four agency partners in the fall of 2004. The Record of Decision was issued by the FTA on October 17, 2008. The DUS Project also includes rezoning of the 19.85-acre site to Denver's new transit mixed use district and designation of the historic structure as a Denver historic landmark.

In 2006, the agency partners solicited proposals for, and selected, a master developer to enter into a publicprivate partnership to develop the public transportation infrastructure and the vertical, private, transit-supported development on the site. Construction at Denver Union Station started in 2009 under a limited Notice to Proceed. Certain improvements to Denver Union Station and related facilities were delivered as part of the Eagle P3 Project described in "THE PROJECT" in the main body of this Official Statement.

The light rail station realignment opened to passengers on August 15, 2011, and the bus facility opened to passengers on May 11, 2014. Amtrak resumed rail service from Denver Union Station on February 28, 2014 and RTD began commuter rail operations on April 22, 2016 with the opening of the University of Colorado A Line. A renovated and modernized Denver Union Station opened in July 2014.

#### Commuter Rail Maintenance Facility

A commuter rail maintenance facility was designed to service the four commuter rail corridors (A Line, G Line, N Line and B Line) included in the FasTracks program. The facility covers approximately 31 acres and is located northwest of downtown Denver. It includes facilities to allow for command and control of the commuter rail operations and security with communication links to the District's light rail transit operation control center and security command center. The Commuter Rail Maintenance Facility, which was completed in March 2015 and is LEED gold certified, was delivered as part of the Eagle P3 Project described in "THE PROJECT" in the main body of this Official Statement.

#### **Reimagine RTD**

As RTD approached the end of construction on FasTracks projects for the foreseeable future, it initiated a new strategic planning initiative called Reimagine RTD in 2019. This was an opportunity for RTD to involve elected officials, stakeholders, taxpayers, customers and employees in a comprehensive effort to look at the future of RTD and transit within its service area and shape that direction.

Reimagine RTD was originally intended to be a two-year effort established to explore near-term service delivery options and plan for the next 30 years of transit in the RTD's service area. Some of the items RTD staff and a consultant team were expected to investigate include restructuring RTD's bus and rail services to better meet the needs of customers and residents of the District, identifying opportunities for finishing FasTracks, addressing the fiscal sustainability of RTD, and identifying future challenges and opportunities related to mobility options, technology, workforce and other issues.

While Reimagine RTD began prior to the COVID-19 pandemic as a bold effort to reshape metro transit, the world has changed as a result of the COVID-19 pandemic, and as a result Reimagine RTD has been put on hold until spring 2021.

#### THE DISTRICT SALES TAX

#### General

Pursuant to the Act, in September 1973, District voters authorized RTD to issue bonds for the purpose of developing a public multi-modal mass transportation system for RTD, such bonds to be payable from District-wide sales taxes imposed at the rate of 0.5% upon every taxable transaction. Effective May 1, 1983, after the State General Assembly eliminated food and utilities from the sales tax base of RTD, the Act was amended to empower RTD to impose the sales tax at the rate of 0.6% throughout the District. At the 2004 Election, District voters approved a ballot measure authorizing RTD to increase the rate of the Sales Tax from the 0.6% Sales Tax by 0.4%, up to a total of 1.0% in connection with financing FasTracks. See "THE SYSTEM – FasTracks." The sales tax and use tax imposed by RTD as described herein are collectively referred to herein as the "**Sales Tax**."

The sales tax, which has been imposed and collected in the District since January 1, 1974, is imposed upon every transaction or other incident with respect to which the State imposes a sales tax on a parity basis with the State. Reference is made to Article 26 of Title 39, Colorado Revised Statutes, as amended (the "**Sales Tax Act**") for a complete description of the transactions subject to or exempt from the State sales tax. The sales tax must be collected at the time of the transaction. One exception to the sales tax being collected at the time of sale applies to the purchase of used automobiles from private parties. If the buyer and seller both live within the District, the sales tax is collected by the county motor vehicle registrar in the county in which the buyer resides at the time that the vehicle is registered and remitted to RTD. If one or more parties live outside the District, no sales tax is collected, but a use tax will be collected by the County motor vehicle registrar in the County in which the buyer resides at the time the vehicle is registered and remitted to RTD. For discussion about the boundaries of the District in which the Sales Tax is levied, see "GENERAL– Organization."

In 1989, the Colorado Supreme Court held that the Act implicitly authorized RTD to impose a use tax. Under Colorado law, a use tax is considered supplementary to, and not separate from, a sales tax. Reference is made to the Sales Tax Act for a complete description of the transactions subject to or exempt from the State use tax. The components of use tax liability to RTD are (1) tangible personal property (2) purchased at retail (3) without prior payment of sales or use tax and (4) use or consumption in the District. Beginning in April 1989, the State Department of Revenue began collecting a use tax for RTD.

#### Manner of Collection of the Sales Tax

**The Sales Tax.** The collection, administration and enforcement of the District's Sales Tax are performed by the Executive Director of the Department of Revenue (the "**Executive Director**") in the same manner as the collection, administration and enforcement of the State sales tax. Legislation enacted in 1987 requires the Executive Director to charge RTD for the cost of collection, administration and enforcement after crediting RTD with interest earnings on amounts collected.

Any person engaged in the business of selling at retail must obtain a license therefor from the State. The State license is in force and effect until December 31 of the year following the year in which it is issued. Each individual vendor in the District is liable for the amount of tax due on all taxable sales made by such vendor. Before the twentieth day of each month, a vendor, if reporting monthly, must make a return and remit the amount due for the preceding calendar month to the Executive Director. Some small businesses are permitted to remit sales tax collections quarterly. The Executive Director may extend the time for making a return and paying the taxes due. A vendor is entitled to withhold an amount equal to 3.33% of the total amount to be remitted to the Executive Director each month in order to cover the vendor's expenses. If any vendor is delinquent in remitting the tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor will not be allowed to retain any amounts to cover the vendor's expenses.

The Executive Director is required to furnish the District a monthly listing of all returns filed by retailers in the District. The District must notify the Executive Director within 90 days of any retailers omitted from the listing or thereafter will be precluded from making any further claims based upon such omission. The District receives sales taxes so collected in the form of monthly distributions made to the District by the Executive Director. Historically, RTD has received Sales Tax proceeds on or about the fifth business day of the second month following receipt thereof by the State Department of Revenue. The District has assigned its rights to receive the 0.6% Sales Tax revenues and 0.4% Sales Tax revenues to the bond trustee for the District's indebtedness. See "DEBT STRUCTURE OF RTD."

*The Use Tax.* Motor vehicles are registered by the county where its owner resides. Consequently, the motor vehicle use tax is collected by each county during its licensing process and is then remitted to the District periodically pursuant to agreements entered into between such counties, the District and the Executive Director. Other use taxes are collected by the State Department of Revenue and distributed to the District on a monthly basis.

#### **Remedies for Delinquent Taxes**

Failure by a retailer to pay the appropriate sales taxes collected is punishable pursuant to State law. A statutorily prescribed rate of interest is due on deficiencies from the first date prescribed for payment. Any vendor receiving a deficiency notice regarding the payment of sales taxes to the District has the right to request the Executive Director to conduct a hearing on the deficiency, and may thereafter appeal the decision to the district court. Conviction of a violation of any of the State's sales tax statutory provisions is punishable by a fine of no more than \$300, or imprisonment for no more than 90 days, or both. Violations also are subject to prosecution and punishment by the State for the violation of State law.

Further, if any part of the deficiency is due to negligence or intentional disregard of the regulations with knowledge thereof, but without intent to defraud, 10% of the total amount of the deficiency, plus interest, is to be added to the amount due. If the deficiency is due to fraud with intent to evade the tax, 100% of the total amount of the deficiency is to be added to the amount due, with an additional 3% per month added from the date the return was due until paid. In both instances, the additional amount and interest become due and payable 10 days after written notice and demand by the Executive Director.

The sales tax imposed constitutes a first lien upon the goods and business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, except for the stock of goods sold or for sale in the ordinary course of business. Such lien takes precedence over other liens or claims of whatsoever kind or nature. Exempted from the lien are identifiable real or personal property leased to a retailer if the lessee has no right to become the owner and properly registered motor vehicles to the extent an interest is not credited to the lessee.

If any tax, penalty or interest imposed and shown due by returns filed by the taxpayer, or shown as assessments duly made, are not paid within five days after the same are due, the Executive Director issues a notice of the amount due, including a statement as to the lien claimed by the District on the property. If such amount remains unpaid, the Executive Director then issues a warrant to any authorized revenue collector or to the county sheriff commanding him to levy upon, seize and sell sufficient property of the tax debtor to satisfy the amount due, subject to valid preexisting claims or liens. A statutory limitation provides that except in the case of the filing of a false or fraudulent return with the intent to evade tax, no action to collect Sales Taxes due may be commenced more than three years after the date on which the tax is payable.

#### Sales Tax Data

The following table sets forth the District's Sales Tax collections for the past five years:

Year	0.6% Sales Tax Collections	0.4% Sales Tax Collections	Total Sales Tax Collections	Percent Change
2015	\$324,911	\$216,607	\$541,518	5.2%
2016	338,159	225,439	563,598	4.1
2017	358,912	239,275	598,187	6.1
2018	380,515	253,677	634,192	6.0
2019	395,651	263,767	659,418	4.0

## TABLE IIIHistorical Sales Tax Revenues(In Thousands of Dollars)

Source: District Comprehensive Annual Financial Report for the fiscal year ended December 31, 2019 (attached as Appendix A-1 hereto).

In 2019, the District collected \$659 million of Sales Tax revenues, representing a 4.0% increase from 2018. Through August of 2020, the District has collected \$404 million (unaudited) of Sales Tax revenues. For a discussion of the effect of COVID-19 on Sales Tax collections from January 1 through August, 2020, see "GENERAL – Certain Considerations Relating to COVID-19."

[Remainder of page left blank intentionally]

The following table of the District's principal Sales Tax generators by type of business is based on Sales Tax revenues remittances to the District for 2019. Because of the confidential nature of the gross sales of the individual entities, the identity of vendors may not be divulged under State law.

TABLE IV	
Fifteen Largest Categories of Generators of Sales Tax 2019	

Type of Business	Percent of Total Sales <u>Tax Collections*</u>
Miscellaneous	28.9%
Food Services and Drinking Places	12.2
Motor Vehicle and Parts Dealers	9.8
General Merchandise Stores	6.8
Miscellaneous Store Retailers	5.9
Food and Beverage Stores	5.2
Merchant Wholesalers, Durable Goods	5.2
Building Materials and Garden	5.1
Clothing and Clothing Accessory Stores	4.1
Accommodation	3.9
Rental and Leasing Services	3.6
Telecommunications	2.7
Furniture and Home Furnishing Stores	2.6
Sporting Goods, Hobby, Book and Music Stores	2.1
Utilities	1.9
Total	100.00%

Source: State of Colorado, Department of Revenue; The District.

\* Numbers may not add due to rounding

Certain counties, municipalities and special districts located within the District also impose sales taxes. A statutorily created special district, the Scientific and Cultural Facilities District, covers generally the same geographical area as RTD and is empowered to levy a 0.1% sales tax. The total sales tax levy in the District, including the State sales tax, RTD Sales Tax and any locally imposed sales tax, ranges from 4.00% in Weld County to 9.25% in the City of Commerce City.

The following table shows taxable retail sales within RTD's service area for the years 2010 through 2019:

#### TABLE V

#### RTD Net Taxable Retail Sales<sup>(1)</sup> (In Millions of Dollars)

Year	City and County of <u>Denver</u>	Boulder <u>County</u>	Jefferson <u>County</u>	Adams <u>County</u> <sup>(2)</sup>	Arapahoe <u>County</u> <sup>(2)</sup>	Douglas <u>County</u> <sup>(2)</sup>	City and County of <u>Broomfield</u> <sup>(2)</sup>	Other <sup>(3)</sup>	Total Taxable <u>Transactions</u>	Percent Annual Increase or <u>Decrease</u>
2010	\$9,766	\$3,391	\$5,656	\$4,433	\$6,817	\$2,390	\$ 935	\$ 718	\$34,106	5.6%
2011	11,239	3,721	6,001	4,749	7,486	2,778	944	1,041	37,959	11.3
2012	12,415	3,851	6,202	5,323	8,109	2,912	991	1,036	40,839	7.6
2013	12,861	4,033	6,538	5,731	8,456	3,108	1,004		41,731	2.2
2014	14,254	4,359	7,013	6,436	9,211	3,318	1,045		45,636	9.4
2015	14,629	4,547	7,505	6,932	9,887	3,575	1,077	1,399	49,551	8.6
2016	15,251	4,798	7,718	7,301	10,144	3,786	1,055	1,359	51,412	3.8
2017	16,125	4,924	7,986	8,117	10,481	4,036	1,144	1,886	54,699	6.4
2018	16,777	5,148	8,585	9,031	10,840	4,191	1,225	1,181	56,978	4.2
2019	17,901	5,821	9,222	9,542	11,809	4,572	1,409	203	60,479	6.1

<sup>(1)</sup> This table represents net taxable retail sales that are subject to sales tax but does not reflect sales subject to use tax.

<sup>(2)</sup> Only a portion of each of these counties lies within the District.

<sup>(3)</sup> Represent taxable transactions that occur within RTD's service area but sales tax collections that occur outside RTD's service area. Source:Colorado Department of Revenue.

#### **DEBT STRUCTURE OF RTD**

#### Generally

Subject to certain exceptions, including refinancing at a lower interest rate, the State Constitution provides that local governmental entities such as RTD may not issue bonds or other multiple-fiscal year financial obligations without the approval of the voters at an election called to approve the debt. See "CONSTITUTIONAL REVENUE, SPENDING AND DEBT LIMITATIONS." The Act does not provide any limitation as to the amount of debt which may be issued by RTD. Lease purchase agreements subject to annual appropriation are not debt or other multiple-fiscal year financial obligations for purposes of State law and therefore do not require voter approval. The following table summarizes the District's authorized and outstanding Sales Tax Revenue Bonds and Lease Purchase Agreements as of December 31, 2019.

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## TABLE VI Statement of Obligations As of December 31, 2019<sup>(7)</sup>

Sales Tax Revenue Bonds (0.6% Sales Tax) <sup>(1)</sup> – Senior Bonds	Outstanding <sup>(2)(7)</sup>
RTD Sales Tax Revenue Refunding Bonds, Series 2007A	\$48,105,000
RTD Taxable Sales Tax Revenue Refunding Bonds, Series 2013A	7,685,000
SUBTOTAL	\$55,790,000
Sales Tax Revenue Bonds (FasTracks – 0.4% Sales Tax) <sup>(3)</sup> – Subordinate Bonds	
RTD Sales Tax Revenue Refunding Bonds (FasTracks Project), Series 2007A	\$ 220,480,000
RTD Taxable Sales Tax Revenue Bonds (FasTracks Project) (Direct Pay Build America	
Bonds), Series 2010B	300,000,000
RTD TIFIA Bond <sup>(4)</sup>	341,878,142
RTD Sales Tax Revenue Bonds (FasTracks Project), Series 2012A	474,935,000
RTD Sales Tax Revenue Refunding Bonds (FasTracks Project), Series 2013A	204,820,000
RTD Sales Tax Revenue Bonds (FasTracks Project), Series 2016A	194,965,000
RTD Sales Tax Revenue Bonds (FasTracks Project), Series 2017A	78,850,000
RTD Sales Tax Revenue Bonds (FasTracks Project), Series 2017B	119,465,000
RTD Sales Tax Revenue Refunding Bonds (FasTracks Project), Series 2019A	82,740,000
SUBTOTAL	\$2,018,133,142
Eagle P3 Project	
TABOR Portion of Service Payments <sup>(5)</sup>	\$580,477,355
Lease Purchase Agreements <sup>(6)</sup>	
Lease Purchase Agreement II (Taxable Refunding Certificates of Participation), Series	
2007A	\$ 4,815,000
Taxable Certificates of Participation, Series 2010B	100,000,000
Certificates of Participation, Series 2013A	158,705,000
Certificates of Participation, Series 2014A	440,915,000
Certificates of Participation, Series 2015A	128,915,000
Lease Purchase Agreement, Series 2016	50,512,658
Lease Purchase Agreement, Series 2017	153,140,000
Certificates of Participation, Series 2020A	63,440,000
SUBTOTAL	\$1,100,442,658
TOTAL	\$3,754,843,155

<sup>&</sup>lt;sup>(1)</sup> Secured by a first lien on the original 0.6% Sales Tax and any additional revenues legally available to RTD that the Board in its discretion pledges by supplemental resolution to the payment of such bonds. The Board has not pledged any additional revenues to secure these outstanding Senior Bonds. Further, the Board has covenanted that no additional securities are to be issued by the District with a pledge of the lien on the 0.6% Sales Tax revenues that is senior to the Parity Bonds except for obligations issued by the District to refund Senior Bonds for interest rate savings.

<sup>&</sup>lt;sup>(2)</sup> RTD is current on payment of its outstanding obligations. None of the outstanding obligations bear interest at a variable rate or are subject to acceleration.

<sup>&</sup>lt;sup>(3)</sup> Secured by first lien on 0.4% Sales Tax and subordinate lien on 0.6% Sales Tax.

<sup>(4)</sup> Amount reflects the par amount of the loan (\$280,000,000) plus accreted interest through 11/1/2020. Interest accreted at a 3.14% interest rate until November 1, 2020, and the District pays current interest thereafter.

<sup>&</sup>lt;sup>(5)</sup> See "THE PROJECT" in the main body of this Official Statement. Secured by a lien on the Sales Tax revenues that is subordinate to the lien thereon of the Senior Bonds and the Subordinate Bonds shown in this **Table VI**. This amount will change as a result of the issuance of the Series 2020 Bonds described in this main body of the Official Statement. See also **Table VII**.

<sup>&</sup>lt;sup>(6)</sup> Paid with annually appropriated lease payments by the District. Not secured by Sales Tax Revenues.

<sup>&</sup>lt;sup>(7)</sup> This table includes the 2020 Certificates, which were issued in March 2020 and refunded the 2010A Certificates maturing on and after June 1, 2021.

Source: The District.

At the 2004 Election, the electors of the District authorized the District to incur \$3.477 billion of indebtedness to finance FasTracks. See "THE SYSTEM – FasTracks." The District has entered into obligations in the aggregate principal amount of approximately \$2.785 billion pursuant to such authorization. Such amount includes commitments under outstanding agreements to reserve certain amounts of its electoral authority. The District is further limited in its ability to issue additional FasTracks indebtedness by maximum annual and maximum total debt service limitations authorized at the 2004 Election as discussed herein.

In connection with the Eagle P3 Project, the District issued the Series 2010 Bonds in the aggregate principal amount of \$397,835,000. The Series 2010 Bonds do not constitute indebtedness of RTD as a multiple-fiscal year obligation of RTD within the meaning of any provisions of the State Constitution or the laws of the State. RTD also has pledged both the 0.4% Sales Tax revenues and 0.6% Sales Tax revenues (to the extent needed) in connection with the Eagle P3 Project on a subordinate basis to the Senior Bonds and Subordinate Bonds as shown in **Table VI**.

Under the authority conferred at the 2004 Election and in order to assist in the financing of a portion of the costs related to Eagle P3 Project, the District entered into the TIFIA Loan Agreement pursuant to which the USDOT will loan a maximum amount of \$280,000,000 to the District, which loan is evidenced by the RTD TIFIA Bond. As of January 15, 2015, the District had drawn the full \$280 million under the TIFIA Loan Agreement. Interest will accrete at an interest rate of 3.14% until November 1, 2020 at which time interest will be payable on a current basis. The RTD TIFIA Bond is on parity with the Subordinate Bonds as shown in **Table VI**.

The District has entered into a number of transactions in which certain of its light rail vehicles have been leased to and subleased back from certain U.S. and foreign companies and has entered into a transaction in which its maintenance facilities have been sold to and leased back from one of these companies. As part of each of these transactions, the District irrevocably set aside certain monies (which were received from each counterparty as payment for its leasing of the buses, light rail vehicles and the real property) with a third-party trustee. The monies held by such trustee will be utilized to make the lease payments owed by the District with respect to its leasing of these assets and the lease payments owed by the District under the transactions are therefore considered fully funded and economically defeased. The vehicles expected to be funded from cash on hand. See Appendix A-1 – "REGIONAL TRANSPORTATION DISTRICT DENVER, COLORADO COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED DECEMBER 31, 2019 AND 2018" and "THE SYSTEM – Long-Term Financial Plan."

The remaining elements of the FasTracks Program to be constructed consist of the Central Rail Extension, the portion of the N Line north of 124<sup>th</sup> Street, and the remainder of the B Line. While it is the goal of the District to build as much of the FasTracks Program as fast as it can, the District will only build what it can fund on a responsible basis, in a manner that will not put the District's System at risk or in which the District will incur leverage in an amount that may jeopardize its ability to operate and maintain the District's System. The District has the capacity to issue additional FasTracks debt and will seek to maximize the benefit of its remaining capacity. The District may also enter into additional lease purchase agreements or certificates of participation financings in connection with its FasTracks Program. The District will also continue to seek opportunities from both the federal and local governments, and through public-private partnerships, to complete the FasTracks Program. RTD also continues to evaluate refunding opportunities that will result in a reduction in interest expense.

#### **Debt Service Requirements and Annual Appropriations**

Debt service requirements to maturity for obligations secured by Sales Tax revenues of the District and for annual amounts subject to appropriation by the District in connection with certificates of participation are set forth in the following table:

#### TABLE VII Annual Debt Service Requirements and Amounts Subject to Appropriation (In Thousands of Dollars)<sup>(1)</sup>

		Sale	es Tax Secured	Obligations <sup>(2)</sup>			Appropi	iations Obligation	18
Year	0.6% Sales Tax Obligations	0 FasTracks Bonds <sup>(3)</sup>	.4% FasTracks Sa TIFIA Loan	les Tax Obligations TABOR Portion of Eagle P3 Service Pmts <sup>(6)</sup>	Subtotal <sup>(6)</sup>	Total Sales Tax Secured Obligations <sup>(6)</sup>	Certificates of Participation <sup>(4)</sup>	Non-Tabor Portion of Eagle P3 Service Payments <sup>(5)</sup>	Total Appropriation Obligations
2020	\$19,982,061	\$ 82,785,235	\$	\$ 45,813,411	\$ 128,598,646	\$ 148,580,707	\$ 110,724,836	\$ 54,366,228	\$ 165,091,064
2021	14,495,579	83,138,419	10,734,974	44,880,209	138,753,602	153,249,181	108,882,891	42,929,281	151,812,172
2022	9,583,950	83,194,169	10,734,974	43,234,830	137,163,973	146,747,923	105,304,383	42,976,608	148,280,990
2023	9,582,400	102,941,419	10,734,974	44,406,755	158,083,148	167,665,548	104,681,566	44,375,139	149,056,704
2024	9,588,275	102,945,519	10,734,973	45,826,936	159,507,428	169,095,703	104,660,321	52,916,967	157,577,287
2025		102,946,619	19,330,708	48,428,598	170,705,925	170,705,925	104,650,848	68,941,545	173,592,392
2026		123,951,619	19,327,608	43,140,457	186,419,684	186,419,684	93,673,138	45,473,216	129,066,353
2027		161,050,069	11,151,341	44,091,582	216,292,992	216,292,992	93,286,388	43,727,773	126,379,161
2028		160,004,819	11,151,342	45,295,081	216,451,242	216,451,242	72,525,513	46,825,191	108,125,704
2029		149,156,319	11,151,342	46,770,639	207,078,300	207,078,300	73,148,995	52,648,306	113,952,300
2030		123,801,569	11,151,340	60,039,255	194,992,164	194,992,164	73,798,102	75,692,613	136,995,714
2031		163,544,594	11,151,341	47,877,776	222,573,711	222,573,711	74,494,389	45,285,059	106,589,447
2032		158,785,344	11,151,342	54,081,444	224,018,130	224,018,130	61,271,235	42,872,897	104,144,132
2032		147.999.669	11,151,341	66.573.884	225,724,894	225,724,894	61,274,437	43,272,245	104,546,682
2034		119,279,394	11,151,343	83,080,124	213,510,861	213,510,861	61,288,974	53,004,179	114,293,153
2035		117,638,144	11,151,341	95,939,624	224,729,109	224,729,109	61,295,461	79,102,485	140,397,946
2036		167,034,737	11,151,341	42,464,776	220,650,854	220,650,854	48,910,427	52,419,271	101,329,698
2037		156,017,623	11,151,341	47,911,070	215,080,034	215,080,034	48,904,956	48,306,955	97,211,911
2038		85,555,332	11,151,341	55,842,154	152,548,827	152,548,827	48,915,538	50,119,391	99,034,929
2039		47,057,500	49,717,913	72,221,724	168,997,137	168,997,137	48,920,552	57,871,536	106,792,088
2040		47,003,500	49,717,915	80,883,662	177,605,077	177,605,077	48,921,919	73,447,043	122,368,962
2041		41,003,750	49,717,914	76,367,926	167,089,590	167,089,590	32,515,550	53,273,799	85,789,349
2042		41,003,000	49,717,915	11,621,992	102,342,907	102,342,907	32,511,075	45,831,896	78,342,971
2043		41,003,500	49,717,914	13,706,348	104,427,762	104,427,762	32,515,450	66,801,535	99,316,985
2044		41,003,000	49,717,914	23,750,516	114,471,430	114,471,430	32,515,325	63,196,154	95,711,479
2045		41,004,250	49,717,915		90,722,165	90,722,165			
2046		94,224,750			94,224,750	94,224,750			
2047		70,831,823			70,831,823	70,831,823			
2048		70,920,223			70,920,223	70,920,223			
2049		71,015,803			71,015,803	71,015,803			
2050		71,116,584			71,116.584	71.116.584			
Total	\$63,232,265	\$3,068,958,298	\$563,439,707	\$1,284,250,773	\$4,916,648,778	\$4,979,881,043	\$1,739,592,269	\$1,345,677,312	\$3,085,269,581

<sup>(1)</sup> Amounts may not add to column totals due to rounding.

<sup>(2)</sup> See "DEBT STRUCTURE OF RTD – Generally."

(3) The Series 2010A and 2010B FasTracks Bonds are Build America Bonds. This table reflects total interest to be paid. The refundable tax credit anticipated to be received from the United States Department of the Treasury has not been subtracted from the amounts shown. See "FINANCIAL INFORMATION CONCERNING RTD – Federal Funding," See "DEBT STRUCTURE OF RTD – Generally,"

(4) The Series 2010B Certificates are Build America Bonds. This table reflects total interest to be paid. The refundable tax credit anticipated to be received from the United States Department of the Treasury has not been subtracted from the amounts shown. See "FINANCIAL INFORMATION CONCERNING RTD – Federal Funding."

<sup>(5)</sup> Payment schedule based on established service level requirements in the P3 Concession Agreement. See "THE SYSTEM - FasTracks - Eagle P3 Project."

<sup>(6)</sup> Reflects changes resulting from the issuance of the Series 2020 Bonds described in the main body of this Official Statement.

#### FINANCIAL INFORMATION CONCERNING RTD

#### **Budget Policy**

RTD annually prepares and adopts an official budget in accordance with the State Local Government Budget Law. RTD's Fiscal Year begins on January 1 and ends on December 31 (the "**Fiscal Year**"). Prior to October 15 of each Fiscal Year, the General Manager submits an operating and capital budget for the ensuing Fiscal Year to the Board for its approval. The Board may accept the budget with a majority vote or may vote to override all or any part of the proposed budget. After the budget is approved (on or before December 31), in conjunction with an appropriation resolution by the Board, which must also approve subsequent amendments thereto, the General Manager is empowered to administer the operating and capital budget. If the Board fails to adopt a budget by the required date, RTD has authority to begin making expenditures limited to 90% of the prior year's approved appropriation for operations and maintenance.

RTD also maintains budgetary controls. These controls ensure compliance with legal provisions embodied in the annual appropriated budget approved by the Board. The budget sets forth proposed outlays for operations, planning, administration, development, debt service, and capital projects. The level of budgetary control (that is, the level at which expenditures may not legally exceed the appropriated amount) is established at the fund level.

Unused appropriations lapse at year-end, except that the Board has the authority, as stated in the adopted appropriation resolution, to carry-over the unused portions of the funds for capital projects not completed for a period, not to exceed three years. RTD's policy also authorizes the General Manager to approve certain line-item transfers within the budget.

RTD administration utilizes multi-year planning and forecasting methods for budgeting and for capital projects planning. Such methods are believed to be effective in more accurately forecasting RTD's financial needs and in programming the capital improvements program to meet its infrastructure requirements. The use of a six-year mid-term operating and capital improvement forecast and a 30-year long term forecast in financial planning has enabled RTD to plan necessary revenue measures to meet future operational and capital needs. See "THE SYSTEM – Long-Term Financial Planning."

#### **Major Revenue Sources**

According to its audited financial statements for the year ended December 31, 2019, RTD derived 61.5% of its combined operating and non-operating income from Sales Tax Revenues, 11.6% from capital grants and local contributions, 15.0% from operating revenues, 8.0% from federal operating assistance, 1.6% from investment income, and 2.2% from other sources.

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The following table summarizes certain information relating to RTD's primary sources of revenue and capital receipts, including Sales Tax revenues, for the years 2010 to 2019:

TABLE VIII
<b>Revenue and Capital Receipts by Source</b> <sup>(1)</sup>
(In Thousands of Dollars)

Total

<u>Year</u>	Operating <u>Revenues</u> (2)	Sales Tax <u>Revenues</u>	Federal Operating <u>Assistance</u>	Investment <u>Income</u>	Other <sup>(4)</sup>	Total <u>Revenue</u>	Federal Capital <u>Grants</u>	Local Capital <u>Contributions</u>	Revenue and Capital <u>Receipts</u>
2010	\$102,356	\$397,549	\$92,655	\$ 8,065	\$ 3,653	\$604,278	\$102,213	\$ 5,265	\$ 711,756
2011	113,379	415,180	89,592	6,484	11,356	635,991	186,073	52,219	874,283
2012	118,262	449,787	68,927	2,613	14,494	654,083	193,991	117,685	965,759
2013	123,040	468,586	88,243	2,040	28,170	710,079	159,783	82,783	952,645
2014	124,903	514,721	75,544	165	16,861	732,194	171,549	34,882	938,625
2015	125,877	541,518	73,383	3,164	11,407	755,349	157,616	11,697	924,662
2016	140,525	563,598	77,335	6,371	15,591	803,420	185,324	16,911	1,005,655
2017	147,376	598,187	80,412	63,030	14,618	903,623	75,500	10,895	990,018
2018	150,766	634,192	86,403	13,409	12,618	897,338	52,229	28,773	978,390
2019	160,943	659,418	86,263	17,669	24,130	948,423	116,303	8,194	1,072,920
2019% <sup>(3)</sup>	15.0%	61.5%	8.0%	1.6%	2.2%	88.4%	10.8%	0.8%	100.0%

<sup>(1)</sup> Data is taken from the financial records of RTD and is presented on the accrual basis.

<sup>(2)</sup> Comprised almost entirely of passenger fare revenues and advertising revenues.

<sup>(3)</sup> Represents 2019 percentage of Total Revenue and Capital Receipts.

(4) Other is comprised of "Other Income" and "Gain/Loss on Capital Assets." Please see the Summary of Statements of Revenue, Expenses, and Changes in Net Position table in the Regional Transportation District, Denver, Colorado, Comprehensive Annual Financial Report in Appendix A-1 hereto.

Source: District Comprehensive Annual Financial Reports for the years ended December 31, 2010-2019.

#### **Fare Structure**

Passenger fare revenues are derived from fares charged to the users of the RTD System. Fares may be paid with exact change, prepaid tickets, a monthly pass valid for unlimited rides during the months for the level of service purchased, or annual passes which are sold to specific groups. Passes include those sold to employers for use by employees ("EcoPass"), passes sold to organized neighborhood groups ("Neighborhood EcoPass"), and passes sold to students at participating colleges or universities ("CollegePass"). The RTD fare structure includes free transfers between routes in the same or lower fare classes. Discounted fares also are available for youth, students, seniors, people with disabilities, and those qualifying for the low-income fare program. RTD does not refund or replace lost or stolen ticket books or passes. Most RTD prepaid fare media are available through various outlets throughout the District's geographical area as well as by mobile ticketing and smart card. EcoPass, Neighborhood EcoPass, and CollegePass program annual passes are sold directly to participating organizations, and each individual participant is given a photo ID pass.

Subject only to Board approval, the District has the flexibility to make fare and service adjustments in the event of a sales tax or fare box revenue decline or operating expense increase, or for any other reason. As a recipient of federal grants, RTD is obligated to consider comments received from a public involvement process prior to implementing any fare increases. The current mid-term plan assumes future fare increases every three years corresponding to the projected increase in the Denver-Boulder Consumer Price Index.

On September 28, 2018, the Board approved revised fares and changes in fare structure that took effect in 2019 as set forth in Tables IX and X below which provided enhanced revenues and modified certain fare offerings.

## TABLE IXFares as of January 1, 2019

	Three-	Three-Hour				
	Hour	Smart Card		Monthly	Senior <sup>(1)</sup> /	
	Fare	Fare	Day Pass	Pass	<b>Disabled Fair</b>	Youth Fare
Mall Shuttle and Free Metro Ride	Free	Free	Free	Free	Free	Free
Local – Bus and Rail	\$ 3.00	\$ 2.80	\$ 6.00	\$114.00	50%	70%
					Discount	Discount
Regional – Bus and Rail	5.25	5.05	10.50	200.00	50%	70%
					Discount	Discount
Airport	10.50	10.30			50%	70%
					Discount	Discount

(1) Seniors include age 65 and older.

Source: The District

TABLE X
New LiVE <sup>(1)</sup> Fare Program as of July 29, 2019

	Hour	Three-Hour Smart Card	
	Fare	Fare	Day Pass
Mall Shuttle and Free Metro Ride	Free	Free	Free
Local – Bus and Rail	\$ 1.80	\$ 1.80	\$ 3.60
Regional – Bus and Rail	3.15	3.15	6.30
Airport	6.30	6.30	

<sup>(1)</sup> LiVE fares offer a 40% discount from full fares for those meeting certain household income requirements.

Source: The District

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The following table summarizes RTD's ridership and fare revenue for the years 2010 to 2019 and through August 31, 2020:

Year	<b>Revenue</b> <b>Boardings</b> <sup>(1)</sup>	Fare Revenue	Percent Change in Fare Revenue
2010	83,732	\$ 97,942	1.1%
2011	83,428	108,497	10.8
2012	85,442	112,929	4.1
2013	87,820	117,841	4.3
2014	91,049	120,497	2.3
2015	88,927	120,530	0.0
2016(2)	88,982	134,622	11.7
2017	87,823	140,217	4.2
2018	95,114	143,231	2.1
2019	95,041	154,390	7.8
2020 <sup>(3)</sup>	36,592	48,723	(68.4)

### TABLE XI RTD Annual Ridership and Fare Revenue<sup>(3)</sup> (In Thousands)

<sup>(1)</sup>Number reflects revenue boardings in thousands of people. Includes Access-a-Ride boardings and vanpool boardings.

<sup>(2)</sup> The W Line opened in April 2013, the R Line opened in February 2017, the

University of Colorado A Line opened in April 2016, and the B Line opened in July 2016.

<sup>(3)</sup>Through August 31, 2020.

Source: District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2010-2019; the District.

#### **Advertising and Ancillary Revenues**

RTD receives additional operating revenue from advertising on its buses and trains and from naming rights. RTD sells signs on the exterior and interior of its vehicles, and allows advertisers to wrap buses and trains with advertising themes. RTD also receives ancillary non-operating revenue from parking fees and charges, leases of retail space at facilities, and other sources.

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The following table shows RTD's advertising income and ancillary non-operating revenues for the years 2010 to 2019, and through August 31, 2020:

Year	Advertising <u>Revenue</u>	Ancillary Revenues
2010	\$3,301	\$ 2,892
2011	3,992	2,528
2012	3,524	2,214
2013	2,924	20,123 (1)
2014	4,324	2,085
2015	4,160	1,186
2016	3,722	2,081
2017	4,280	2,879
2018	4,433	3,102
2019	4,482	2,071
2020 <sup>(2)</sup>	2,984	598

#### TABLE XII RTD Advertising and Ancillary Revenues (In Thousands of Dollars)

<sup>(1)</sup> The 2013 increase is due to the sale of an air rights easement above Civic Center Station.

- <sup>(2)</sup> Through August 31, 2020. Advertising and Ancillary Revenues for 2020 are projected to be less than 2019
- Source: District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2010-2019; the District.

#### **Federal Funding**

RTD is a designated recipient of federal funds from the FTA. These grants are reserved for capital, planning, technical assistance or operating assistance projects. The following table shows RTD's grant receipts from FTA for the years 2010 to 2019, and through August 31, 2020:

#### TABLE XIII RTD Federal & Local Grant Receipts (In Thousands of Dollars)

Year	Federal Capital	Local Contributions	Grant Operating Assistance
2010	\$102,213	\$ 5,285	\$92,655
2011	186,073	52,219	89,592
2012	193,991	117,685	68,927
2013	159,783	82,783	88,243
2014	171,549	34,882	75,544
2015	157,616	11,697	73,383
2016	185,324	16,911	77,335
2017	75,500	10,895	80,412
2018	52,229	28,773	86,403
2019	116,303	8,194	86,263
2020 <sup>(1)</sup>	39,274	113,000	237,458

(1) Through August 31, 2020. In 2020, RTD expects to receive additional federal funding from the CARES Act, which will total \$232 million for the year. See "GENERAL – Certain Considerations Relating to COVID-19 – CARES Act Funding."

Source: District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2010-2019; the District.

As a condition of receipt of FTA grants, RTD is typically required to augment these grants with certain amounts of its own locally generated funds. As of June 30, 2019, RTD had a commitment to provide \$28,152,263 in local funds in order to receive \$71,194,954 in federal and state grant funds. FTA operating assistance is allocated nationally on a formula basis, and cannot exceed 50% of an agency's total operating budget.

As a designated recipient, RTD must comply with prevailing statutes, regulations, administrative requirements, executive orders, and FTA guidance. These include, but are not limited to, requirements in the areas of labor, seniors and disabled, civil rights, charter bus service, financial reporting, privatization, public participation, and environmental regulations. The grant agreements contain substantial conditions and limitations concerning the payment of federal funds, and such payments also may be subject to continuing appropriations by the United States Congress.

The sequestration provisions of the Budget Deficit Control Act of 2011 went into effect on March 1, 2013, and are currently scheduled to remain in effect through federal fiscal year 2029 absent a change in federal legislation. As a result of sequestration, the Build America Bond subsidy received by RTD related to the Tax Credit Obligations payable in federal fiscal year 2016 was reduced by 6.8% (\$599,855), the amount payable in federal fiscal year 2017 was reduced by 6.9% (\$608,676), the amount payable in federal fiscal year 2018 was reduced by 6.6% (\$582,212), the amount payable in federal fiscal year 2019 was reduced by 6.2% (\$546,927), the amount payable in federal fiscal year 2020 was reduced by 5.9% (\$520,462) and the amount payable in federal fiscal year 2021 is to be reduced by 5.7% (\$502,820). The RTD annual operating assistance grants of approximately \$93.3 million in 2019 are exempt from sequestration. While the RTD Full Funding Grant Agreements ("**FFGAs**"), are subject to sequestration, RTD received its full appropriation of \$13.4 million for 2019. FTA's stated policy is to honor existing FFGAs. RTD expects any reduction in cash flow from an award to be temporary, and receipts would most likely be made whole over the remainder of the annual FFGA allocation. Overall, RTD does not anticipate that sequestration will have a material impact on cash flows over time and will not impact its ability to complete its projects on time.

#### **Investment Income**

For the year ended December 31, 2018, RTD earned investment income in the amount of \$13,409,000, representing approximately 1.4% of 2018 revenues. For the year ended December 31, 2019, RTD earned investment income in the amount of \$17,669,000, representing approximately 1.6% of 2019 revenues. See Table VIII herein for further information.

#### **Financial Summary**

The following tables summarize certain financial information regarding RTD. The data for the five years ended December 31, 2019 has been prepared by RTD from its audited financial statements for the years ended December 31, 2015-2019. For detailed financial information, see Appendix A-1 – "REGIONAL TRANSPORTATION DISTRICT DENVER, COLORADO COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED DECEMBER 31, 2019 AND 2018."

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# TABLE XIV Summary of Statements of Revenues and Expenses and Changes in Net Position For the Years Ended December 31, 2015-2019<sup>(1)</sup> (In Thousands of Dollars)

_	Years ended December 31				
	<b>2015</b> <sup>(2)</sup>	2016	2017	2018	2019
Operating Revenues:					
Passenger Fares	\$120,530	\$134,622	\$140,217	\$143,231	\$154,390
Other	5,347	5,803	7,159	7,535	6,553
Total Operating Revenues	125,877	140,425	147,376	150,766	160,943
Operating Expenses:					
Salaries, wages, fringe benefits	227,207	260,039	263,977	236,892	251,074
Materials and supplies	58,884	52,180	44,686	51,335	54,983
Services	79,749	58,560	77,323	81,189	96,085
Utilities	13,673	14,220	16,503	16,419	17,823
Insurance	8,102	10,382	13,319	9,941	10,833
Purchased transportation	113,216	156,605	159,051	176,416	203,559
Leases and rentals	3,462	3,288	2,829	1,996	3,204
Miscellaneous	4,531	4,183	4,213	4,317	5,053
Total Operating Expenses	508,824	559,457	581,901	578,505	642,614
Operating loss before depreciation	(382,947)	(419,032)	(434,525)	(427,739)	(481,671)
Depreciation	<u>152,531</u>	222,154	248,633	285,653	355,417
Operating Loss	(535,478)	(641,186)	(683,158)	(713,392)	(837,088)
Nonoperating Income (expense):					
Sales and use tax revenues	541,518	563,598	598,187	634,192	659,418
Grant operating assistance	73,383	77,335	80,412	86,403	86,263
Interest income	3,164	6,371	63,030	13,409	17,669
Other income	10,322	9,927	10,596	12,618	26,582
Gain/loss capital assets	1,085	5,664	4,022	(1,449)	(2,452)
Interest expense	(79,686)	(77,272)	(65,346)	(62,770)	(200,845)
Other expense/Unrealized loss	(1,422)	(1,258)	(2,981)	(16)	(672)
Total Nonoperating Income	548,364	584,365	687,920	682,387	585,963
Net income before capital grants and local contributions	12,886	(56,821)	4,762	(31,005)	(251,125)
Capital grants and local contributions	<u>169,313</u>	202,235	<u>86,395</u>	<u>81,002</u>	<u>124,497</u>
Increase in Net Position	182,199	145,414	91,157	49,997	(126,628)
Net Position, Beginning of Year (as previously reported)	3,181,074	3,176,938	3,322,352	3,413,509	3,463,506
Change in accounting principle <sup>(2)</sup>	(186,335)				
Net Position at End of Year	\$3,176,938	\$3,322,352	\$3,413,509	\$3,463,506	\$3,336,878

<sup>(1)</sup> Financial data is from the District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2015-2019.

<sup>(2)</sup> In 2015, the District adopted Government Accounting Standards Board (GASB) Statement No. 68, Accounting for Financial Reporting for Pensions, as amended by GASB Statement No. 71 Pension Transition for Contributions Made Subsequent to the Measurement Date. GASB 68 requires governments providing defined benefit pensions to recognize the long-term obligation for pension benefits as a liability.

Source: District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2015-2019.

#### TABLE XV Comparison of Budgeted<sup>(1)</sup> and Actual Revenues and Expenses 2015-2019; 2020 Amended Budget (In Thousands of Dollars)

		<u>2019</u>		<u>2018</u>		<u>2017</u>		<u>2016</u>		<u>2015</u>	
	2020 Amended Budget	2019 Amended Budget	2019 Actual	2018 Amended Budget	2018 Actual	2017 Amended Budget	2017 Actual	2016 Amended Budget	2016 Actual	2015 Amended Budget	2015 Actual
Operating Revenues:	8	•		8		•		2		8	
Passenger fares	\$93,824	\$163,600	\$154,390	\$146,785	\$143,231	\$142,500	\$140,217	\$130,173	\$134,622	\$123,373	\$120,530
Other	5,513	5,616	6,553	5,666	7,535	6,023	7,159	4,797	5,803	5,245	5,347
Total operating revenues	99,337	169,216	160,943	152,451	150,766	148,523	147,376	134,970	140,425	128,618	125,877
Operating Expenses:											
Salaries, wages, fringe benefits	285,448	279,004	251,074	258,452	236,892	238,452	263,977	222,966	260,039	202,135	227,207
Materials and supplies	62,766	63,563	54,983	60,853	51,335	55,853	44,686	60,001	52,180	67,741	58,884
Services	120,156	139,262	96,085	148,405	81,189	154,405	77,323	139,385	58,560	139,607	79,749
Utilities	18,857	19,926	17,823	18,149	16,419	22,149	16,503	19,382	14,220	15,015	13,673
Insurance	13,795	14,151	10,833	11,485	9,941	8,485	13,319	7,665	10,382	7,595	8,102
Purchased transportation	218,503	211,016	203,559	187,209	176,416	174,209	159,051	175,696	156,605	114,214	113,216
Leases and rentals	4,358	3,090	3,204	3,712	1,996	3,712	2,829	3,557	3,288	3,415	3,462
Miscellaneous	9,302	7,204	5,053	12,102	4,317	14,432	4,213	9,601	4,183	5,824	4,531
Total Operating Expenditures	733,185	737,216	642,614	700,367	<u>578,505</u>	671,697	581,901	638,253	559,457	555,546	508,824
Operating Loss	(633,848)	(568,000)	(481,671)	(547,916)	(427,739)	(523,174)	(434,525)	(503,283)	(419,032)	(426,928)	(382,947)
Nonoperating revenue (expense):											
Sales and Use Tax	500,954	662,376	659,418	622,834	634,192	586,053	598,187	569,763	563,598	551,368	541,518
Grant operating assistance	321,569	92,013	86,263	102,681	86,403	103,785	80,412	96,767	77,335	78,832	73,383
Investment income	3,748	15,695	17,669	11,732	13,409	4,197	63,030	3,840	6,371	4,310	3,164
Other income	12,969	12,871	25,582	13,246	12,618	11,244	10,596	20,200	9,927	11,020	10,322
Gain/loss on capital assets	12,909	12,071	(3,124)	15,240	(1,449)	11,244	4,022	20,200	5,664	11,020	1,085
Interest expense	(168,977)	(152,155)	(200,845)	(153,248)	(62,770)	(129,719)	(65,346)	(117,313)	(77,272)	(95,365)	(79,686)
Other expense	(100,777)	(152,155)	(200,045)	(155,240)	(16)	(12),(1))	(2,981)	(117,515)	(1,258)	()5,505)	(1,422)
Total Nonoperating Revenue	670,263	630,800	585,963	597,245	682,387	575,560	687,920	573,257	584,365	550,165	548,364
	,	050,000	<i>,</i>	557,215							,
Proceeds from issuance of long-term debt	0		(96,071)		(5,805)	457,091	402,435	457,091	314,174	457,091	299,688
Capital Outlay:											
Capital expenses		693,520	350,221	849,538	335,080	1,055,839	451,245	1,396,223	693,159	1,687,076	870,055
Less capital grants											
	379,950	(266,591)	(124,497)	(311,134)	(81,002)	(418,898)	(86,395)	(258,089)	(202,235)	(206,451)	(169,313)
		426,929	225,724	538,404	254,078	636,941	364,850	1,138,134	490,924	1,480,625	700,742
Long-term debt principal payment	146,675	76,771	146,475	58,065	64,700	58,065	489,841	61,698	133,098	58,942	54,348
Excess (deficit) of revenue and non- operating											
income over (under) expenses, capital outlay and											
debt principal payments	(190,210)	\$ <u>(440,900)</u>	(363,978)	\$ <u>(547,140)</u>	(69,935)	\$ <u>(185,529)</u>	(198,861)	\$ <u>(672,767)</u>	(144,515)	\$ <u>(959,239)</u>	(289,985)
Increases (decreases) to reconcile budget basis to											
GAAP basis:			200 224		225 000		400 0.00		(02.170		0.50
Capital expenditures			350,221		335,080		451,245		693,159		870,055
Long-term debt proceeds			96,071		5,805		(402,435)		(314,174)		(299,688)
Long-term debt principal			146,475		64,700		489,841		133,098		54,348
Depreciation			(355,417)		<u>(285,653)</u>		(248,633)		(222,154)		(152,531)
NET INCOME			\$ <u>(126,628)</u>		\$ <u>49,997</u>		\$ <u>91,157</u>		\$ <u>145,414</u>		\$ <u>182,199</u>

The District's annual budget is prepared on the same basis as that used for accounting except that the budget also includes proceeds of long-term debt and capital grants as revenues, and expenditures include capital outlays and bond principal payments, and exclude depreciation and gains and losses on disposition of property and equipment.
 The District typically amends is budget mid-year to make necessary incremental changes which are supported by identified revenue resources. The District's intent is to always maintain a balanced budget.
 Source: District Comprehensive Annual Financial Reports for the fiscal years ended December 31, 2015-2019; The District's 2020 Amended Budget was adopted July 21, 2020.

#### Fiscal Year 2020 Amended Budget (In Thousands of Dollars)

	()	in Thousanus of Donars)		¢ c1	4/ 51 - 2020 A - 1 1 D - 1
COMBINED	2019 Actual	2020 Adopted Budget	2020 Amended Budget	\$ Change 2020 Amended Budget vs. 2020 Adopted Budget	% Change 2020 Amended Budget vs. 2020 Adopted Budget
Operating Revenue:	2019 Actual	2020 Adopted Budget	2020 Amended Budget	vs. 2020 Adopted Budget	vs. 2020 Adopted Budget
Farebox Revenues	\$154,390	\$158,116	\$93,824	\$(64,292)	-40.7%
Advertising Revenues	4,482	3,400	3,400	3(04,292)	-40.7%
	(201)	1,002	1,002	-	0.0%
Joint Venture Revenue				-	
Other Operating Revenues	2,271	1,111	1,111	-	0.0%
Total Operating Revenue	160,942	163,629	99,337	(64,292)	-39.3%
Operating Expenses (excluding Depreciation):					
Bus Operations	182,671	167,014	168,651	1,637	1.0%
Rail Operations	139,364	169,720	175,723	6,003	3.5%
Private Carrier Operations	94,315	120,501	119,154	(1,347)	-1.1%
Access-a-Ride	45,362	54,184	46,602	(7,582)	-14.0%
Planning	6,724	5,154	11,415	6,261	121.5%
Capital Programs & Facilities	62,330	53,961	68,840	14,879	27.6%
Safety, Security & Asset Management	33,950	39,853	39,504	(349)	-0.9%
General Counsel	15,995	17,391	17,111	(280)	-1.6%
Finance & Administration	53,547	56,253	55,090	(1,163)	-2.1%
Communications	13,257	14,771	16,189	1,418	9.6%
Executive Office	6,809	6,730	6,647	(83)	-1.2%
Board Office	878	1.170	1,192	(83)	1.9%
Other Non-Departmental	10,846	9,605	7,068	(2,537)	-26.4%
FasTracks Service Increases	10,040	2,003	7,008	(2,557)	-20.4%
Allocated Expenditures	(23,433)	-	-	-	0.0%
	(23,433)		-		
Expense Projects Carry-forward	-	23,437		(23,437)	-100.0%
Total Operating Expenses (excluding Depreciation)	642,615	739,744	733,186	(6,558)	-0.9%
Operating Income/(Loss)	(481,673)	(576,115)	(633,849)	(57,734)	10.0%
Non-Operating Revenues:					
Sales Tax	604,792	597,262	454,082	(143,180)	-24.0%
Use Tax	54,625	67,481	46,873	(20,608)	-30.5%
Grant Revenue - Operating	86,263	92,231	321,569	229,338	248.7%
Grant Revenue - Capital	120,782	218,109	231,088	12,979	6.0%
Investment Income	17,669	7,496	3,748	(3,748)	-50.0%
Other Income	24,209	12,969	12,969	-	0.0%
Total Non-Operating Revenues	908,340	995,547	1,070,328	74,781	7.5%
Income Before Debt Service and Cap Ex	426,667	419,432	436,479	17,047	4.1%
Debt and Reserves:	420,007	41),452	450,479	17,047	4:170
	(14( (75)	(00.174)	(80.174)		0.00/
Debt Payments	(146,675)	(88,174)	(88,174)	-	0.0%
Interest Expense	(201,585)	(170,384)	(168,977)	1,407	-0.8%
Financing Proceeds	93,030	-	-	-	0.0%
Drawdown/(Increase) in Capital Replacement Reserve	-	-	-	-	0.0%
Drawdown/(Increase) in FasTracks Debt Service Reserve	-	-	-	-	0.0%
Drawdown/(Increase) in FasTracks Construction Reserve	-	-	-	-	0.0%
Drawdown (Increase) in FasTracks Internal Savings Account	-	(11,461)	(16,101)	(4,640)	40.5%
Drawdown/(Increase) in FasTracks Management Reserve	-	-	-	-	0.0%
Contributed Capital	3,704	116,790	79,025	(37,765)	-32.3%
Increase / (Decrease) in Debt and Reserves	(251,526)	(153,229)	(194,227)	(40,998)	26.8%
Capital Expenditures:					
Prior Year Approved Capital Carryforward	315,916	573,644	450,456	(123,188)	-21.5%
Facilities Construction & Maintenance	-	6,069	6,552	483	8.0%
Bus Infrastructure	-	-	-	-	0.0%
Park-n-Rides	-	-	-	-	0.0%
Capital Support Projects		3,601	3,584	(17)	-0.5%
Rail Construction		1,282	1,282	(17)	0.0%
Rail Transit	_	1,282	1,282	_	0.0%
Fleet Modernization & Expansion	-	20,504	20,504	-	0.0%
	-	933	933	-	
Capital Support Equipment	-			-	0.0%
Treasury	-	5,155	5,155	-	0.0%
Systems Planning	-	-	-	-	0.0%
Unallocated Capital	-	-	-		0.0%
Fastracks Program	-	854	59,179	58,325	6829.6%
Net Capital Expenditures	315,916	613,324	548,927	(64,397)	-10.5%
Current Activity	\$(140,775)	\$(347,121)	\$(306,675)	\$40,446	-11.7%

#### Management's Discussion of Fiscal Year 2021 Budget

#### Summary

The Fiscal Year 2021 Budget of RTD adopted by the Board on November 17, 2020 (the "**Fiscal Year 2021 Budget**") is available at https://www.rtd-denver.com/sites/default/files/files/2020-10/2021-RTD-Budget-Detail\_0.pdf. The Fiscal Year 2021 Budget includes the projected operating and non-operating revenue shown below (in thousands) which are estimated, not appropriated.

#### **Operating Revenue, Non-Operating Revenue**

BASE SYSTEM (0.6%)	2020 Amended Budget \$000s	2021 Adopted Budget \$000s	Change
Farebox Revenue	\$ 65,677	\$ 60,961	\$ (4,716)
Other Operating Revenue	4,541	3,932	(609)
Sales/Use Tax	300,573	393,025	92,452
Grant Revenue	297,019	118,510	(178,509)
Investment Income	704		(704)
Other Income	3,392	3,170	(222)
Base System Revenue	\$671,905	\$579,598	\$(92,308)
FASTRACKS PROJECT (0.4%)			
Farebox Revenue	\$	\$	\$
Other Operating Revenue			
Sales/Use Tax	49,970	148,376	98,406
Grant Revenue	255,638	66,772	(188,866)
Investment Income	3,044		(3,044)
Other Income	8,274	8,319	45
FasTracks Project Revenue	\$316,926	\$223,467	\$(93,459)
FASTRACKS OPERATIONS			
Farebox Revenue	\$ 28,147	\$ 27,501	\$ (646)
Other Operating Revenue	972	874	(98)
Sales/Use Tax	150,412	113,641	(36,771)
Grant Revenue			
Investment Income			
Other Income	1,303	442	(861)
FasTracks Operations Revenue	\$180,834	\$142,458	\$(38,376)
Total FasTracks Revenue	\$497,760	\$365,925	\$(131,835)
DISTRICT-WIDE			
Farebox Revenue	\$ 93,824	\$ 88,462	\$ (5,362)
Other Operating Revenue	5,513	4,806	(707)
Sales/Use Tax	500,954	655,041	154,087
Grant Revenue	552,657	185,282	(367,375)
Investment Income	3,748		(3,748)
Other Income	12,969	11,931	(1,038)
District-Wide Revenue	\$1,169,665	\$945,522	\$(224,143)

The Fiscal Year 2021 Budget appropriation includes the projected operating expenses, debt service and reserves, capital expenditures, and fund balances shown below (in thousands).

#### **Operating Expenses, Debt Service, Capital Expenditures, Fund Balances**

	2020 Amended	2021 Adopted	
BASE SYSTEM (0.6%)	Budget \$000s	Budget \$000s	Change
Operating Expense	\$543,976	\$474,409	\$ (69,567)
Interest Expense	16,760	14,340	(2,420)
New Capital	39,292	17,099	(22,193)
Debt Payments	65,793	63,931	(1,862)
FasTracks Internal Savings Account			
Board Appropriated Fund	26,400	26,200	(200)
Capital Replacement Fund			
Unrestricted Operating Reserve	15,400	15,400	
Unrestricted Fund	39,689	83,400	43,711
Base System (0.6%) Appropriation	\$747,310	\$694,779	\$(52,531)
<b>Base System Previously Approved Capital</b>	\$ <u>109,915</u>	\$ <u>133,626</u>	\$ <u>23,711</u>
Total Base System Appropriation	\$ <u>857,225</u>	\$ <u>828,405</u>	\$(28,820)
FASTRACKS PROJECT (0.4%)			
Operating Expense	\$ 9,006	\$ 4,973	\$ (4,003)
Interest Expense	152,217	161,384	9,167
New Capital	59,179		(59,179)
Debt Payments	22,381	23,860	1,479
FasTracks Management Reserve	890		(890)
FasTracks Internal Savings Account	119,646	137,304	17,658
Board Appropriated Fund	751	414	(337)
Capital Replacement Fund Unrestricted Fund	751 751	414 414	(337) (337)
FasTracks Project (0.4%) Appropriation	\$ <mark>365,572</mark>	\$328,763	<u>(36,809)</u> \$(36,809)
FasTracks Project Previously Approved Capital	\$ <u>340,541</u>	\$ <u>318,598</u>	\$ <u>(21,943)</u>
Total FasTracks Project Appropriation	\$ <u>706,113</u>	\$ <u>647,361</u>	\$(58,752)
	*	*	(co,c-)
FASTRACKS OPERATIONS	\$180,204	\$150,006	¢(20,109)
Operating Expense Interest Expense	\$180,204	\$150,000	\$(30,198)
New Capital			
Debt Payments			
Board Appropriated Fund	15,017	12,501	(2,516)
Capital Replacement Fund	15,017	12,501	(2,516)
Unrestricted Fund	15,017	12,501	(2,516)
FasTracks Operations Appropriation	\$225,255	\$187,509	\$(37,746)
FasTracks Operations Previously Approved Capital	\$ <u></u>	\$ <u> </u>	\$ <u></u>
Total FasTracks Operations Appropriation	\$ <u>225,255</u>	\$ <u>187,509</u>	\$ <u>(37,746)</u>
Total FasTracks Appropriation	\$ <u>931,368</u>	\$ <u>834,870</u>	\$ <u>(96,498)</u>
DISTRICT-WIDE			
Operating Expense	\$733,186	\$629,388	\$ (103,798)
Interest Expense	168,977	175,724	6,747
New Capital	98,471	17,099	(81,372)
Debt Payments	88,174	87,791	(383)
FasTracks Management Reserve	890	127 204	(890)
FasTracks Internal Savings Account Board Appropriated Fund	119,646 42,168	137,304 39,115	17,658 (3,053)
Capital Replacement Fund	42,108	12,915	(2,853)
Unrestricted Operating Reserve	15,400	15,400	(2,033)
Unrestricted Fund	55,457	96,315	40,858
District-Wide Appropriation	\$1,338,137	\$1,211,051	\$(127,086)
District-Wide Previously Approved Capital	\$ <u>450,456</u>	\$ <u>452,224</u>	\$ <u>1,768</u>
Total District-Wide Appropriation	\$ <u>1,788,593</u>	\$ <u>1,663,275</u>	\$ <u>(125,318)</u>
2 lotter i we reprive opimicon	4 <u>-39</u>	\$ <u>1,001270</u>	

#### Overview of the Fiscal Year 2021 Budget

Revenues of \$945.5 million on a combined basis are expected to decrease \$224.1 million (-19.2%) in 2021 from the 2020 Amended Budget. This is due to (i) a decrease in farebox revenue of \$5.4 million, (ii) a decrease in grant revenue of \$367.4 million, (iii) a decrease in investment income of \$3.7 million, (iv) a decrease in other income of \$1.7 million, offset by (v) an increase in sales/use tax revenue of \$154.1 million.

- Combined (Base System and FasTracks) farebox revenue of \$88.5 million is budgeted to decrease \$5.4 million or 5.7% from the 2020 Amended Budget. Planned service levels in 2021 will be approximately 55% of pre-pandemic levels.
  - On the Base System, farebox revenue is forecast at \$61.0 million, a decrease of \$4.7 million from the 2020 Amended Budget.
  - For FasTracks, farebox revenue is forecast at \$27.5 million, a decrease of \$0.6 million from the 2020 Amended Budget.
- Ridership is expected to continue to be diminished through much of 2021 due to the effects of the pandemic.
- Sales and use tax revenue of \$655.0 million in 2020 is forecast to increase 5.5% or \$34.0 million over the 2020 estimate. The Fiscal Year 2021 Budget incorporates the most recent September quarterly sales/use tax forecast by the CU-Leeds School of Business.
- Total grant revenue, including new and carry-forward amounts, is estimated at \$185.3 million, a decrease of \$367.4 million from the 2020 Amended Budget.
  - Total Base System grants are estimated at \$118.5 million in 2021, and of that amount \$114.9 million is new grants while projected carry-forward grant funding is \$3.6 million. Base System grants are projected to decrease \$178.5 million from the 2020 Amended Budget. The forecast assumes no additional CARES Act grant funding for 2021. Large grants for the Base System include formula FTA grants for capital maintenance (5307), fixed guideway (5337), and bus facilities (5339), state FASTER grants, and VW settlement funds.
  - FasTracks grants are budgeted at \$66.8 million, which is a decrease of \$188.9 million from the 2020 Amended Budget reflecting the receipt of the CARES Act grant funding in 2020. Of the amount, all \$66.8 million is the projected carry-forward grant funding to 2021, with no new grant funding. Operating grant revenue is estimated to decrease \$82.0 million while capital grant revenue is estimated to decrease \$106.9 million from the 2020 Amended Budget. The carryforward is made up of final draws on the FFGA for the Eagle project and Small Starts funding for SERE.
- Combined investment income is budgeted at \$0 due to expectation of minimal investable fund balances.
- Other operating income and other income totaling \$16.7 million is budgeted to decrease \$1.7 million from the 2020 Amended Budget. This recurring miscellaneous revenue is mostly increased at the CPI and includes advertising revenue, joint venture revenue, parking income, rental income, third-party reimbursement, and other items. Included in other income is the Build America bonds subsidy (FasTracks Project), payment by the University of Colorado for naming rights on the A Line which discontinues in April (FasTracks Operations), DUS rental income (Base System and FasTracks Operations), and Greyhound rental income (Base System).

Operating expenditures are budgeted at \$629.4 million on a combined basis in 2021 (excluding depreciation), which is \$103.8 million lower than the 2020 Amended Budget. Base System operating expenses are budgeted to decrease \$69.6 million, FasTracks Project operating expenses are budgeted to decrease \$4.0 million, and FasTracks Operations operating expenses are budgeted to decrease \$30.2 million.

On the Base System, departmental operating expenses are targeted amounts derived from the 2021-2022 Mid-Term Financial Plan, plus operating/expense projects carry-forward from 2020, and other miscellaneous revisions unknown at the time of the MTFP.

For FasTracks Operations, operating expenses include full allocation from Base to FasTracks for costs of operating FasTracks services, which is a full allocation including administrative and support costs, and which totals \$31.0 million for 2021. FasTracks Operations also includes a \$58.1 million estimated service payment to Denver Transit Operators for commuter rail operations.

The operating/expense project carry-forward to 2021 is \$10.4 million for Base System, \$0.09 million for FasTracks Project, and \$2.6 million for FasTracks Operations.

Diesel fuel is budgeted at \$2.03 per gallon, compared to a lock price of \$2.00 per gallon in 2020. Gasoline is budgeted at an average cost of \$2.50/gallon in 2020, which is down from \$2.90 in the 2020 budget. Total fuel usage will be lower in 2021 due to service reductions.

Interest expense in 2021 is budgeted at \$175.7 million on a combined basis, an increase of \$6.7 million over the 2020 Amended Budget. Of total interest expense, \$14.3 million is budgeted for Base System and \$161.4 million is budgeted for FasTracks. The increase is mainly due to the payment, as opposed to capitalization, of interest beginning on the TIFIA loan in 2021 for \$10.7 million. FasTracks interest expense includes the TABOR interest expense of \$35.6 million.

Principal payments on debt will be \$87.8 million on a combined basis, which is down \$0.4 million from the 2020 Amended Budget. Base System principal payments of \$63.9 million are \$1.9 million lower than the 2020 Amended Budget due to scheduled principal amortization on current debt and a refunding. FasTracks principal payments of \$23.9 million are \$1.5 million higher than the 2020 Amended Budget due to scheduled principal amortization on current debt and a refunding. FasTracks principal amortization on current debt offset by a refunding. The TABOR principal payment of \$10.7 million is included in the FasTracks debt payment. No new debt issuances are planned in 2021 for either the Base System or FasTracks. Both will draw from previously issued debt to fund major capital purchases and/or construction.

Capital expenditures are comprised of both the capital carry-forward from 2020 (previously approved capital) arising from timing of project completion, and new capital for 2021. The capital carry-forward is \$452.2 million made up of \$133.6 million on the Base System and \$318.6 million on FasTracks.

New capital spending of \$17.1 million on a combined basis will decrease \$81.4 million from the 2020 Amended Budget. Base System new capital expenditures account for the entire \$17.1 million, consisting of the electric bus purchases project of \$16.1 million funded by revenues awarded to RTD by the Federal Transit Administration under the Volkswagen settlement program and the Low or No Emission Vehicle Program, and \$1.0 million in an innovative mobility project fully-funded by grants. FasTracks new capital expenditures are estimated at zero. The Base System electric buses project was approved as part of the MTFP.

Fund balance and reserve accounts include an increase of \$43.7 million to the Base System unrestricted yearend fund balance for a total fund balance of \$83.4 million. The actual amount realized may be lower or higher than projected due to lower or higher fare revenue and sales tax revenue in 2021, which will become evident in the 2021 amended budget. Also on the Base System, the Board-appropriated fund is budgeted at \$26.2 million, the capital replacement fund is budgeted to remain at \$0, and the unrestricted operating reserve is budgeted to be unchanged at \$15.4 million. The total of these fund balances is budgeted at \$125.0 million for the Base System.

In FasTracks Project and FasTracks Operations, the three key reserve funds (Board-appropriated, capital replacement, and unrestricted fund) are maintained at 3 months of operating expenses and total \$38.7 million in the

2021 budget. The FasTracks Internal Savings Account (FISA) is budgeted at \$137.3 million in 2021, an increase of \$17.6 million. Other designated reserve funds (unrestricted) are estimated at \$164.8 million.

On a District-wide basis, the total of the Board-appropriated fund, the capital replacement fund, the unrestricted operating reserve and the unrestricted fund balance is budgeted to increase \$34.9 million over the 2020 Amended Budget. These fund balances are maintained in accordance with fiscal policies for the Base System, FasTracks Project and FasTracks Operations per the District's Fund Balance Policy.

#### Financial Impact

The Fiscal Year 2021 Budget is balanced, and the total proposed current year appropriation for the Fiscal Year 2021 Budget (combined Base and FasTracks) is \$1.211 billion. This includes an operating expense budget of \$629.4 million, interest expense of \$175.7 million, new capital expenditures of \$17.1 million, debt payments of \$87.8 million, FasTracks Internal Savings Account of \$137.3 million, Board-appropriated fund of \$39.1 million, capital replacement fund of \$12.9 million, unrestricted operating reserve of \$15.4 million, and estimated unrestricted fund balance of \$96.3 million. The previously approved capital (capital carry-forward) is \$452.2 million. The sum of the budget appropriation and capital carry-forward is \$1.663 billion.

#### FORWARD LOOKING STATEMENTS

The statements contained in this Appendix A, particularly the information contained under the captions "THE SYSTEM – Long-Term Financial Planning," and "– FasTracks," and "FINANCIAL INFORMATION CONCERNING RTD – Management's Discussion of Fiscal Year 2021 Budget" and in any other information provided by the District, that are not purely historical, are forward looking statements, including statements regarding the District's expectations, hopes, intentions, or strategies regarding the future. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Appendix A are based on information available to the District on the date hereof, and the District assumes no obligation to update any such forward-looking statements. The District's actual results could differ materially from those discussed in such forward-looking statements.

The forward-looking statements, included herein, are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes or developments in social, economic, business, industry, market, legal, regulatory circumstances and conditions and actions taken or omitted to be taken by third parties, including customers, suppliers, business partners and competitors, and legislative, judicial, and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive, and market conditions of future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of the District. Any of such assumptions could be inaccurate and, therefore, there can be no assurance that the forward-looking statements included in this Official Statement will prove to be accurate.

#### CONSTITUTIONAL REVENUE, SPENDING AND DEBT LIMITATIONS

On November 3, 1992, the voters of the State approved an amendment to the State Constitution (the "Amendment") that limits the powers of public entities to borrow, tax and spend.

The Amendment requires voter approval prior to the imposition by RTD of a new tax, tax rate increase, mill levy increase, valuation for assessment ratio increase, tax extension or other change in tax policy that results in a net gain of tax revenues or the creation by RTD of any multiple-fiscal year direct or indirect debt or other financial obligation, subject to certain exceptions, including refinancing at a lower interest rate. Elections for such voter approval may be held only at a State general election or on the first Tuesday of November of odd-numbered years.

In the absence of voter approval, the Amendment also limits, with certain adjustments, annual percentage increases in RTD property tax revenues and total revenues, subject to certain exceptions, to the total of inflation plus

changes in the actual value of real property within its boundaries. Revenues collected by RTD in excess of the limit are required to be refunded during the next calendar year. In addition, in the absence of voter approval, the Amendment limits, with certain adjustments, annual percentage increases in RTD spending, subject to certain exceptions, to the total of inflation plus the changes in the actual value of real property within its boundaries. If revenues fall in any calendar year, the lower total becomes the new RTD base for computing the next year's limits. On November 2, 1999, the voters of the District voted to exempt RTD from the revenue and spending limitations of the Amendment for the purpose of repaying any debt incurred to finance the Southeast Corridor light rail project or operating such project, for as long as any such debt remains outstanding, but in no event beyond December 31, 2026. On November 2, 2004, the voters of the District also exempted the District from any revenue and spending limitations on the 0.4% Sales Tax Revenues and related investment income.

#### **GOVERNMENTAL IMMUNITY**

The Colorado Governmental Immunity Act, Title 24, Article 10, Part 1, Colorado Revised Statutes, as amended (the "Governmental Immunity Act"), provides in part, that public entities are immune from liability in all claims for injury which lie in tort or could lie in tort (regardless of the type of action of the form of relief chosen by the claimant), except to the extent specifically excluded by the Governmental Immunity Act. These exclusions include claims resulting from: (a) the operation, by a public employee during the course of his or her employment, of a motor vehicle (including a light rail car or engine) that is owned or leased by a public entity; (b) the operation by a public entity of a public hospital, correctional facility or jail; (c) a dangerous condition of a public building or public facility operated by a public entity, including a public water, gas, sanitation, electrical, power or swimming facility; (d) a dangerous condition of a public highway, road or street which physically interferes with the movement of traffic, a dangerous condition caused by a failure to realign traffic signs turned without authorization in a manner which reassigns the right-of-way on intersecting public highways, roads or streets or by a failure to repair traffic control signals on which conflicting directions are displayed or a dangerous condition caused by an accumulation of snow and ice which interferes with access to public buildings when a public entity has actual notice of such condition, has a reasonable time to act and fails to use existing means available to it for removal or mitigation; or (e) the operation and maintenance by a public entity of any public water, gas, sanitation, electrical, power or swimming facility. The Governmental Immunity Act defines "dangerous condition" as a physical condition or use which constitutes an unreasonable risk to the health or safety of the public which is or should have been known to exist and which is proximately caused by the negligent act or omission of the public entity. The maximum amounts that may be recovered under the Governmental Immunity Act, whether from one or more public entities and public employees, are as follows: (a) for any injury to one person in any single occurrence, the sum of \$350,000 for claims accruing before January 1, 2018, or the sum of \$387,000 for claims accruing on or after January 1, 2018 and before January 1, 2022; or (b) for an injury to two or more persons in any single occurrence, the sum of \$990,000 for claims accruing before January 1, 2018, except in such instance, no person may recover in excess of \$350,000; or the sum of \$1,093,000 for claims accruing on or after January 1, 2018, and before January 1, 2022, except in such instance, no person may recover in excess of \$387,000. The Governmental Immunity Act also specifies the sources from which judgments against public entities may be collected and provides that public entities are not liable either directly or by indemnification for punitive or exemplary damages or for damages for outrageous conduct, except as may be otherwise determined by a public entity pursuant to the Governmental Immunity Act.

RTD may be subject to civil liability and may not be able to claim sovereign immunity for actions founded upon various federal laws. Examples of such civil liability include, but are not limited to, suits filed pursuant to 42 U.S.C. Section 1983 alleging the deprivation of federal constitutional or statutory rights of an individual. In addition, RTD may be enjoined from engaging in anti-competitive practices which violate the antitrust laws. However, the Governmental Immunity Act provides that it applies to any action brought against a public entity or a public employee in any Colorado state court having jurisdiction over any claim brought pursuant to any federal law, if such action lies in tort or could lie in tort.

Pursuant to the Governmental Immunity Act, a public entity may prospectively waive its immunity. RTD has waived sovereign immunity for certain types of claims. Specifically, RTD has waived immunity for claims arising from the construction of light rail lines, up to the limits of its insurance policy covering such claims.

#### MUNICIPAL ADVISOR TO RTD

RTD has retained Hilltop Securities Inc., Dallas, Texas as Municipal Advisor in connection with the sale of the Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make an independent verification of or to assume any responsibility for the accuracy, completeness or fairness of the information contained in this Appendix A.

The Municipal Advisor provided the following sentence for inclusion in this Appendix A. The Municipal Advisor reviewed the information in this Appendix A in accordance with its responsibilities to the District, and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Municipal Advisor does not guarantee the accuracy or completeness of such information.

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#### **APPENDIX A-1**

#### REGIONAL TRANSPORTATION DISTRICT DENVER, COLORADO COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED DECEMBER 31, 2019 AND 2018

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## COMPREHENSIVE ANNUAL FINANCIAL REPORT

Fiscal year ended December 31, 2019 and 2018



Regional Transportation District | 1660 Blake Street, Denver, Colorado 303.299.6000 | rtd-denver.com

Qwest

#### REGIONAL TRANSPORTATION DISTRICT DENVER, COLORADO

#### **COMPREHENSIVE ANNUAL FINANCIAL REPORT**

Fiscal Year Ended December 31, 2019 and 2018

Prepared by

**Finance Division** 

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#### **Regional Transportation District**



June 3, 2020

Board of Directors Regional Transportation District Denver, Colorado

In accordance with Colorado statutes and Regional Transportation District (RTD) bylaws, the enclosed Comprehensive Annual Financial Report of the Regional Transportation District as of December 31, 2019, has been compiled. Responsibility for the accuracy of the presented data and the completeness and fairness of the presentation, including all disclosures, rests with RTD. Management believes the data, as presented, fairly sets forth the financial position and operating results of RTD. Disclosures necessary to enable the reader to gain the maximum understanding of the financial affairs of RTD have been included.

In developing and evaluating RTD's accounting system, consideration has been given to the adequacy of internal accounting controls. These controls are discussed by the Chief Financial Officer in the Letter of Transmittal. Within that framework, we believe RTD's internal accounting controls adequately safeguard assets and provide reasonable assurance of the proper recording of financial transactions.

This report has been prepared according to the guidelines recommended by the Government Finance Officers Association of the United States and Canada. In accordance with these guidelines, the accompanying report is presented in three parts:

- 1. Introductory Section, including the Chief Financial Officer's Letter of Transmittal.
- 2. Financial Section containing the independent auditor's report, Management's Discussion and Analysis, the financial statements, notes thereto and supplemental information.
- 3. Statistical Section, including selected tables of unaudited data depicting the financial history of RTD, demographics, and other miscellaneous information.

Colorado law requires the governing bodies of local governments to have an independent audit of RTD's financial statements performed. RTD has complied with this requirement and has included the report of the independent auditors in the Financial Section of this report.

Preparation of this Comprehensive Annual Financial Report could not have been accomplished without the dedicated efforts of the entire financial staff. Should you have any questions or comments, please contact Heather McKillop, Chief Financial Officer.

Respectfully submitted, Angie Rivera-Malpiede Chair, Executive Committee THIS PAGE LEFT BLANK INTENTIONALLY



June 3, 2020

Ms. Angie Rivera-Malpiede Chair, Executive Committee Regional Transportation District

State law requires that all general-purpose local governments publish within seven months of the close of each fiscal year a complete set of financial statements presented in conformance with generally accepted accounting principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm of licensed certified public accountants. Pursuant to that requirement, we hereby issue the Comprehensive Annual Financial Report of the Regional Transportation District (RTD) for the fiscal year ended December 31, 2019.

This report consists of management's representations concerning the finances of RTD. Consequently, management assumes full responsibility for the completeness and reliability of all of the information presented in this report. To provide a reasonable basis for making these representations, management of RTD has established a comprehensive internal control framework that is designed both to protect the government's assets from loss, theft, or misuse and to compile sufficient, reliable information for the preparation of RTD's financial statements in conformity with GAAP. Because the cost of internal controls should not outweigh their benefits, RTD's comprehensive framework of internal controls has been designed to provide reasonable rather than absolute assurance that the financial statements will be free from material misstatement. As management, we assert that, to the best of our knowledge and belief, this financial report is complete and reliable in all material respects.

RTD's financial statements have been audited by RubinBrown, LLP, a firm of licensed certified public accountants. The goal of the independent audit was to provide reasonable assurance that the financial statements of RTD for the fiscal year ended December 31, 2019, are free of material misstatement. The independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; assessing the accounting principles used and significant estimates made by management; and evaluating the overall financial statement presentation. The independent auditor concluded, based upon the audit, that there was a reasonable basis for rendering an unmodified opinion that RTD's financial statements for the fiscal year ended December 31, 2019, are fairly presented in conformity with GAAP. The independent auditor's report is presented as the first component of the Financial Section of this report.

The independent audit of the financial statements of RTD was part of a broader, federally mandated "Single Audit" designed to meet the special needs of federal grantor agencies. The standards governing Single Audit engagements require the independent auditor to report not only on the fair presentation of the financial statements, but also on the audited government's internal controls and compliance with legal requirements, with special emphasis on internal controls and legal requirements involving the administration of federal awards. These reports are in RTD's separately issued Single Audit Report.

GAAP requires that management provide a narrative introduction, overview, and analysis to accompany the basic financial statements in the form of Management's Discussion and Analysis (MD&A). This letter of transmittal is designed to complement the MD&A and should be read in conjunction with it. RTD's MD&A can be found immediately following the report of the independent auditors.

#### **REGIONAL TRANSPORTATION DISTRICT (RTD)**

RTD provides public mass transit service to the Denver metropolitan area. In 1969, the Colorado General Assembly (Assembly) found that public transit was a necessary part of the growing Denver Metropolitan Region. The Assembly found that public

sector involvement was the best method to ensure the continuation of this vital component. Thus, the Regional Transportation District was created as a political subdivision of the State effective July 1969 "to develop, maintain, and operate a public mass transportation system for the benefit of the District."

RTD boundaries now include Jefferson, Boulder, and Denver counties, most of the City and County of Broomfield, and portions of Adams, Douglas, Weld, and Arapahoe counties. Over 3.09 million people reside within RTD's 2,342 square mile area.

Since 1983, RTD has had a fifteen-member Board of Directors that are elected by their constituents to serve four-year terms to govern RTD. There are approximately 200,000 residents per director district. The RTD Board of Directors is responsible for setting policy, overseeing the agency's annual budget, and establishing short and long-range transit goals and plans in concert with local, state, and federal agencies.

RTD employs over 2,956 men and women, making it one of the largest employers in the eight county areas. In addition, RTD contracts with private carriers to provide access-a-ride, fixed route and commuter rail services employing over 2,058 men and women. Besides its administrative headquarters in Denver, RTD has seven operating facilities (excluding purchased transportation services), including four in Denver, one in Aurora, one in Englewood, and one in Boulder.

The financial reporting entity includes all of the financial activities of RTD, as well as those activities of its component unit, the Asset Acquisition Authority, Inc. (the Authority), a nonprofit corporation established to facilitate RTD's use of lease/purchase financing.

RTD also maintains budgetary controls. These controls ensure compliance with legal provisions embodied in the annual appropriated budget approved by RTD's Board of Directors. The budget sets forth proposed outlays for operations, planning, administration, development, debt service, and capital assets. The level of budgetary control (that is, the level at which expenditures cannot legally exceed the appropriated amount) is established at the project level.

The annual budget serves as the foundation for RTD's financial planning and control. All departments of RTD are required to submit requests for appropriation to the General Manager on or before August 1<sup>st</sup> of each year. The General Manager uses these requests as the starting point for developing a proposed budget. The General Manager then presents this proposed budget to the Board of Directors for review prior to October 15<sup>th</sup>. The Board of Directors is required to hold a public hearing on the proposed budget and to adopt a final budget no later than December 31<sup>st</sup>.

Unused appropriations lapse at year-end, except that the Board of Directors has the authority, as stated in the adopted appropriation resolution, to carry-over the unused portion of the funds for capital projects not completed, for a period not to exceed three years.

RTD's policy also authorizes the General Manager to approve certain line-item transfers within the budget. Budget-to-actual comparisons are provided in the Supplemental Information Section of this report.

#### **Factors Affecting Financial Condition**

The information presented in the financial statements is perhaps best understood when it is considered in the broader perspective of the specific environment within which RTD operates.

RTD serves the eight-county region considered the Denver metropolitan area. It is the most populated area of the state and the economic barometer of Colorado. Employment in the Denver Metro area is dominated by small businesses. These companies represent a diverse mix of industries and are located throughout the Denver metropolitan area, providing a geographic balance in employment centers.

The Colorado Legislative Council (CLC) in its March 2020 report forecasts that the economy is changing by the hour based on news of the novel coronavirus. The efforts to contain the disease pose a significant downside risk to this economic and revenue forecast.

Key Economic Indicators	2018 Actual	2019 Forecast	2020 Forecast
Job Growth	5.8%	6.0%	3.5%
Unemployment	3.3%	3.6%	3.2%
Personal Income Growth	5.4%	5.3%	3.5%
Population Growth	1.4%	1.4%	1.3%
Inflation	2.7%	2.3%	2.2%

Economists for CLC reported the following key economic indicators:

On November 3, 1992, the voters of Colorado approved a Constitutional Amendment (the "Amendment") that limits taxes, revenue, and spending for state and local governments effective December 31, 1992. On November 7, 1995, the voters of the District exempted RTD from the revenue and spending limitations concerning the Amendment through December 31, 2005. On November 2, 1999, the voters of the District further exempted RTD from the revenue and spending limitations outlined in the Amendment for the purpose of paying any debt incurred to finance the construction of the Southeast and Southwest light rail lines or to operate such for as long as any debt remains outstanding, but in no event beyond December 31, 2026.

On November 2, 2004, the voters of the District authorized an increase in the District's sales and use tax rate from 0.6% to 1.0%, effective January 1, 2005, to finance the FasTracks transit improvement program. This authorization also exempted the District from any revenue and spending limitations on the additional tax and on any investment income generated by the increased tax revenue, and allowed RTD to incur debt to finance the capital improvements included in the FasTracks program. At the time that all FasTracks debt is repaid, the District's sales and use tax rate will be reduced to a rate sufficient to operate the transit system financed through FasTracks.

#### Long-term Financial Planning

Each year the Board of Directors adopts a financially balanced Mid-Term Financial Plan (MTFP), which is the six-year operating and capital improvement plan for RTD including both the Base System and FasTracks. This plan was previously made up of two separate components known as the Strategic Budget Plan (SBP) for the Base System and the Annual Program Evaluation (APE) for FasTracks. The MTFP is a component of the long-term transportation planning program for the Denver metropolitan area evaluated by the Denver Regional Council of Governments (DRCOG). While the MTFP is developed separately for the Base System and FasTracks, RTD integrates both plans into a single medium and long-term Financial Plan which includes the entirety of RTD in a single report. This financial information forms the basis for the development of RTD's annual budget.

Long-term financial planning seeks to allocate resources among related and, at times, competing activities and to optimize those resources in a manner consistent with defined organizational goals and objectives.

#### FINANCIAL INFORMATION

RTD management is responsible for establishing and maintaining an internal control structure designed to ensure that assets are protected from loss, theft, or misuse and that adequate accounting data are compiled to allow for the preparation of financial statements in conformity with GAAP. RTD has designed its internal control structure to provide reasonable, but not absolute, assurance that these objectives are met. The concept of reasonable assurance recognizes that: (1) the costs of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgment by management.

**Single Audit:** As a recipient of federal assistance, RTD is responsible for ensuring that an adequate internal control structure is instituted to ensure compliance with applicable laws and regulations related to those programs. This internal control structure is subject to periodic evaluation by management and the RTD internal audit staff.

As part of RTD's single audit, tests are made to determine the adequacy of the internal control structure, including that portion related to federal financial assistance programs, as well as to evaluate RTD's compliance. RTD's single audit for the fiscal year ended December 31, 2019 found no instances of material weakness in the internal control structures or significant violations of applicable laws and regulations. A separate report was prepared for this purpose.

**Fiscal Policy:** RTD follows a fiscal policy approved by the Board of Directors annually or as necessary due to modification. The fiscal policy contains policies for revenue, investments, expenditures, capital improvements, fund balance, debt, budgeting, accounting and grants.

**Debt Administration:** RTD formulates its debt policy to protect its credit ratings and soundly manage its assets and liabilities. Included in this policy is a requirement that debt will not be used to finance current operations. Another requirement precludes financing capital projects beyond the useful life of the project. Additional policies go beyond these essential guidelines and result in further protection. RTD has a dual rating for its 1.0% sales tax credit. Moody's Investors Service rates the sales tax credit as "Aa1", Standard and Poor's Corporation rates the sales tax credit "AAA" and Fitch Ratings rates the sales tax credit "AA" that are secured by the 0.6% sales tax. Moody's Investors Service rates the sales tax credit as "Aa2", Standard and Poor's Corporation rates the sales tax credit "AA+" and Fitch Ratings rates the sales tax credit "AA" that are secured by the 0.4% sales tax.

**Cash Management:** The main objective of RTD's cash management program is the protection of investment principal while providing optimal levels of cash throughout the year. The RTD investment policy is modified periodically to adapt to changes in eligible investments, benchmarks, and specific objectives.

During the year, RTD invested its cash in various investment vehicles including money market funds, U.S. Treasury securities, agency securities, discount notes, commercial paper, repurchase agreements, and variable and fixed rate mortgage-backed securities. The total average return on investments for the year was 1.4%.

**Risk Management:** RTD employs a combination of self-insurance and purchased insurance in its efforts to protect assets and control and prevent losses.

The areas of self-insurance are worker's compensation, automobile and general liability. RTD is self-insured for liability, the limits of which are \$387,000 per person and \$1,093,000 per occurrence as specified under the Colorado Governmental Immunity statute. The self-insured retention for worker's compensation claims is \$2,000,000 per claim, with any amounts above this covered by purchased insurance up to the legal limits of liability under the Colorado worker's compensation statute.

Commercial insurance policies provide property coverage up to \$500,000,000 for buildings, their contents, and rolling stock (other than collision); a Commercial Crime Policy with a limit of \$10,000,000; a \$5,000 bond for CDL Testing Performance Bond; \$2,600,000 Workers' Compensation Bond; Felonious Assault Policy; travel insurance for employees on RTD business; fiduciary coverage on the Trustees of the Union Pension Trust, Salaried Pension Trust, Represented Health and Welfare Union Trust, Legal Trust, and the employees administering the health benefits program for salaried employees with a limit of \$10,000,000; Cyber Liability policy with a limit of \$10,000,000; Drone policy with a limit of \$10,000,000. With the growth of Light Rail Transit (LRT) services, and Commuter Rail Transit (CRT) services. RTD has added Railroad Protective and Railroad Liability commercial insurance policies that provide coverage when required under operational needs.

#### **OTHER INFORMATION**

**Independent Audit:** State statutes require an annual audit by independent certified public accountants. The accounting firm of RubinBrown LLP was selected to perform the 2019 audit. This audit also was designated to meet the requirements of the

Federal Single Audit 2 CFR 200.501, Uniform Grant Guidance and related 2 CFR 200, Uniform Grant Guidance – Uniform Administrative Requirements, Cost Principles and Audit Requirements. The auditor's report on the financial statements and schedules are included in the Financial Section of this report. The auditor's report related specifically to the single audit is included in a separate report.

Awards: The Government Finance Officers Associations (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to RTD for its Comprehensive Annual Financial Report for the fiscal year ended December 31, 2018. This is the twenty-seventh consecutive year that RTD has been awarded this prestigious award.

In order to receive the Certificate of Achievement for Excellence in Financial Reporting, RTD must publish an easily readable and efficiently organized Comprehensive Annual Financial Report, the contents of which must conform to program standards. This report must also satisfy both GAAP and applicable legal requirements.

The Certificate of Achievement is valid for one year only. We believe our current Comprehensive Annual Financial Report meets the program's requirements and will be submitting it to the GFOA to determine its eligibility for another certificate.

Acknowledgements: Preparation of the Comprehensive Annual Financial Report on a timely basis was made possible by the dedicated services of the entire staff of the Finance Division. Each member of the division has our sincere appreciation for the contributions made in the preparation of this report.

Finally, without the leadership and support of the members of the RTD's Board of Directors, preparation of this report would not have been possible.

Sincerely, uldup nn Heather McKillop **Chief Financial Officer** 

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#### **Board of Directors**

RTD's governing body is a 15-member elected Board of Directors, with each member elected from one of the fifteen districts comprising RTD's service area. Each district is apportioned equally by population and most districts cross county boundaries. The districts are assigned letter designations from "A" to "O". The following are the members of the Board of Directors as of January 2019:

**District A** Kate Williams Denver/Arapahoe Counties

**District B** Shontel Lewis Denver/Adams Counties

**District C** Angie Rivera-Malpiede, Chair Denver/Jefferson Counties

**District D** Jeff Walker Denver/Jefferson/Arapahoe Counties

**District E** Claudia Folska PhD. Denver/Arapahoe Counties

**District F** Bob Broom Arapahoe County

**District G** Ken Mihalik Arapahoe/Douglas Counties

**District H** Doug Tisdale Arapahoe/Douglas Counties District I Judy Lubow Boulder/Broomfield/Adams/Weld Counties

**District J** Vince Buzek, Secretary Adams/Jefferson Counties

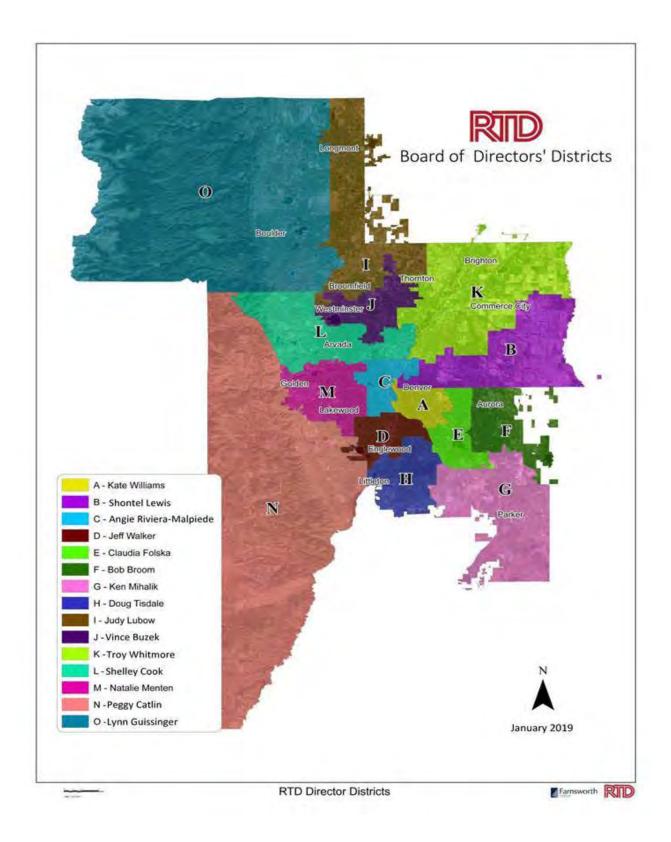
**District K** Troy Whitmore Adams/Weld Counties

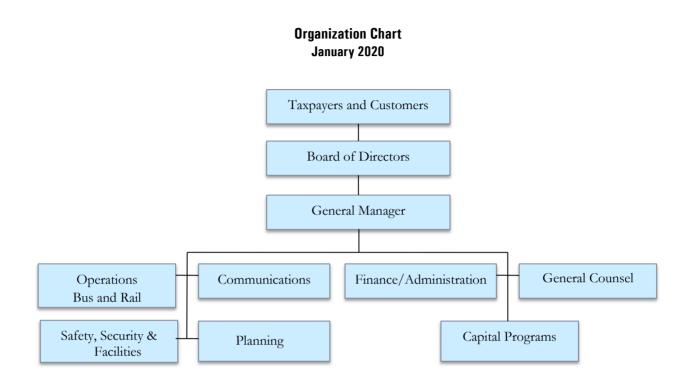
**District L** Shelley Cook, Second Vice Chair Jefferson/Adams Counties

**District M** Natalie Menten Jefferson County

**District N** Peggy Catlin, First Vice Chair Jefferson County

**District O** Lynn Guissinger, Treasurer Boulder County





## **Department Officials**

Interim General Manager/Chief Executive Officer	<b>AGM, Communications</b>
Paul Ballard	Pauletta Tonilas
AGM, Safety, Security & Asset Management	<b>AGM, Planning</b>
Michael Meader	William C. Van Meter
<b>Chief Operating Officer, Bus and Rail</b>	AGM, Capital Programs & Facilities
Michael Ford	Henry Stopplecamp
<b>AGM, Bus Operations</b>	Chief Financial Officer/Administration
Fred Worthen	Heather McKillop
<b>AGM, Rail Operation</b>	<b>General Counsel</b>
Dave Jensen	Jennifer Ross-Amato (Acting)



Government Finance Officers Association

# Certificate of Achievement for Excellence in Financial Reporting

Presented to

# Regional Transportation District Colorado

For its Comprehensive Annual Financial Report for the Fiscal Year Ended

# December 31, 2018

Christophen P. Morrill

Executive Director/CEO

FINANCIAL SECTION

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CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS CONSULTANTS

# Independent Auditors' Report

Board of Directors Regional Transportation District Denver, Colorado

# **Report On The Financial Statements**

We have audited the accompanying financial statements of the Regional Transportation District (RTD) as of and for the years ended December 31, 2019 and 2018 and the related notes to the financial statements, which collectively comprise RTD's basic financial statements as listed in the table of contents.

## Management's Responsibility For The Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

# Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of RTD as of December 31, 2019 and 2018, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

# **Other Matters**

# Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and pension plan summary information on pages 23 through 35 and 86 through 89, respectively, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by Governmental Accounting Standards Board, which considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

# Supplementary And Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise RTD's basic financial statements. The accompanying budgetary information, introductory section and statistical section are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The budgetary information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the budgetary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on them.

# Other Reporting Required By Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated June 3, 2020 on our consideration of RTD's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering RTD's internal control over financial reporting and compliance.

Rubin Brown LLP

June 3, 2020

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The management of the Regional Transportation District (RTD) offers users of our financial statements this narrative overview and analysis of the financial activities for the years ended December 31, 2019 and 2018. This discussion and analysis is designed to assist the reader to focus on significant financial activities and identify any significant changes in the financial position of RTD. It should be read in conjunction with the financial statements that follow this section. All amounts, unless otherwise indicated, are expressed in thousands of dollars.

#### **Key Reporting Implementations**

In fiscal year 2016 RTD implemented the provisions of Governmental Accounting Standards Board (GASB) Statement No. 72, *Fair Value Measurement and Application*, which would generally require state and local governments to measure investments at fair value. GASB's goal is to enhance the comparability of governmental financial statements by requiring fair value measurement for certain assets and liabilities using a consistent definition and accepted valuation techniques. This standard expands fair value disclosures to provide comprehensive information for financial statement users about the impact of fair value measurements on a government's financial position.

#### **Financial Highlights**

As of December 31, 2019 and 2018, total assets and deferred outflows of resources of RTD exceeded total liabilities and deferred inflows of resources by \$3,336,878 and \$3,463,506 respectively. The amount of unrestricted net position as of December 31, 2019 was \$(165,410) compared to \$(207,306) in 2018. RTD's unrestricted net position was negatively impacted by the implementation of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions* (GASB 68). GASB 68 required RTD to record the amount of unfunded pension liabilities. More information on the pension plans is available in the Notes.

The net position of RTD decreased by \$126,628 (3.7%) during the current year compared to an increase of \$49,997 (1.5%) in the previous year. The decrease for 2019 was due to additional depreciation on assets that were placed in service during 2018 and 2019 due to the opening of additional rail lines as well as expensing interest costs on the Eagle P3 project that had previously been recorded as prepaid items. The 2018 increase was due to higher operating revenues, sales and use tax collections increases a one-time gain recognized for a bond refunding, net of increases in operating expenses and non-operating expenses.

RTD's sales and use tax revenues are its largest single source of revenues. These tax revenues increased \$25,226 (4.0%) in 2019 and increased \$36,005 (6.0%) in the previous year. In 2019 and 2018, The District experienced growth in tax revenues due to increased consumer and business-spending activity as the District continues to experience population growth in both years of 1.4%, low unemployment of 3.6% and 3.3% as well as growth in personal income of 5.3% and 5.4%, respectively.

For 2019, total operating expenses exceeded total revenues resulting in a loss before non-operating revenue and expenses of \$837,088 compared to a loss of \$713,392 for 2018. The increase in operating loss for 2019 and 2018 was mostly due to FasTracks depreciating assets for a full year and betterments for the North Metro. RTD anticipates operating losses, as these losses are subsidized by non-operating sales and use tax, grant revenues and other miscellaneous income.

RTD's total debt decreased \$69,194 (2.0%) and decreased \$68,788 (2.0%) in 2019 and 2018, respectively. Debt decreased in 2019 and 2018 due to payment of principal.

Capital grants and local contributions increased \$43,495 (53.4%) in 2019 and decreased 5,393 (6.2%) in the previous year. The increase in 2019 was a result of Eagle P3 project grant funding. The decrease in 2018 was a result of South East Rail Extension being in final phase of completion.

RTD's capital assets, excluding depreciation, increased \$297,820 (3.3%) in 2019 and increased \$312,270 (3.6%) in 2018. The increase in both 2019 and 2018 was primarily due to the build-out of the FasTracks project.

#### **Basic Financial Statements**

Management's Discussion and Analysis serves as an introduction to RTD's basic financial statements. RTD's financial statements are prepared using proprietary fund (enterprise fund) accounting that uses the same basis of accounting as private-sector business enterprises. Under this method of accounting, an economic resources measurement focus and an accrual basis of accounting is used. Revenue is recorded when earned and expenses are recorded when incurred.

The basic financial statements are comprised of four components: statements of net position; statements of revenues, expenses and changes in net position; statements of cash flows; and notes to the financial statements.

The statements of net position presents information on assets and deferred outflows of resources and liabilities and deferred inflows of resources, with the difference between the two reported as the net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of RTD is improving or deteriorating. The statements of revenues, expenses, and changes in net position presents information on operating revenues and expenses and non-operating revenues and expenses of RTD for the fiscal year with the difference, the net income or loss, combined with any capital grants and local contributions to determine the change in net position for the year. That change combined with the previous year-end total net position reconciles to the net position total at the end of the current fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the changes occurs, regardless of the timing of the related cash flows.

The statements of cash flows reports cash and cash equivalent activities for the fiscal year resulting from operating activities, capital, and related financing activities and investing activities. The result of these activities added to the beginning of the year cash balance reconciles to the cash and cash equivalents balance at the end of the current fiscal year. The statements of cash flows, along with the related notes and information in other financial statements, can be used to assess the following: RTD's ability to generate positive cash flows and pay its debt as the debt matures; the reasons for differences between RTD's operating cash flows and operating income (loss); and the effect of investing, capital, and financing activities on RTD's financial position.

The notes to the financial statements provide additional information that is essential to fully understand the data provided in the statements of net position, statements of revenues, expenses, and changes in net position, and statements of cash flows.

RTD provides bus, paratransit, and light rail service in a 2,342 square mile area in and around Denver, Colorado. The activities of RTD are supported by a 0.6% and 0.4% sales and use tax collected within the District. The 0.6% sales and use tax is used to fund the Base System operations of RTD. The Base System operations provide the bus and the majority of current light rail services in the Denver area. The 0.4% sales and use tax funds the FasTracks build-out program and operation and maintenance of those program elements as well as providing for enhanced transit services in the District. Additional revenue sources include fare collections, federal, state, and local financial assistance, investment income, and other income such as advertising and rental income.

#### **Financial Analysis**

**Condensed Financial Information** - Condensed financial information from the statements of net position and statements of revenues, expenses, and changes in net position is presented below.3

**Statements of Net Position** – As of December 31, 2019 and 2018, total assets and deferred outflows of resources of RTD exceeded total liabilities and deferred inflows of resources by \$3,336,878 and \$3,463,506, respectively. The largest portion of this excess, in 2019 and in 2018, was invested in capital assets, net of related debt. RTD uses these capital assets to provide public transportation services to customers; consequently, these assets are not available for future spending. Although RTD's investment in capital assets is reported net of related debt, it should be noted that funding required to repay this debt will be obtained from other sources such as sales and use tax, since the capital assets themselves cannot be used to pay the related debt. The amount of unrestricted net position as of December 31, 2019 was \$(165,410) compared to \$(207,306) in 2018. Substantially all of the unrestricted net position, although not legally restricted, has been appropriated or reserved by the RTD Board for future capital acquisition and reserve policy requirements, and debt liquidation during

the budget process. The deficit balance in Unrestricted Net Position includes an allowance for a Net Pension Liability of \$265,841 in 2019 for the represented employee defined benefit pension plan (see Note I). RTD has recognized this liability in its financial statements in accordance with *GASB Statement 68*; however, RTD is current in making all required contributions under the collective bargaining agreement.

Condensed Summ	ary Statement	s of Net Position			
		2019	2018		2017
Assets and Deferred Outflows of Resources:					
Current assets	\$	636,702	\$	590,800	\$ 509,171
Current assets - restricted		148,698		231,752	270,180
Capital assets (net of accumulated depreciation)		6,841,843		6,851,205	6,804,036
Other noncurrent assets		112,762		146,383	 263,293
Total assets		7,740,005		7,820,140	7,846,680
Deferred outflows of resources		106,844		80,739	95,038
Total assets and deferred outflows of resources		7,846,849		7,900,879	7,941,718
Liabilities and Deferred Inflows of Resources:					
Current liabilities		232,739		249,953	255,237
Noncurrent liabilities		4,218,495		4,083,427	 4,253,670
Total liabilities		4,451,234		4,333,380	 4,508,907
Deferred inflows of resources		58,737		103,993	 19,302
Total liabilities and deferred inflows of resources		4,509,971		4,437,373	 4,528,209
Net position:					
Net investment in capital assets		2,987,538		3,144,175	3,135,186
Restricted debt service		117,805		139,779	148,627
Restricted TABOR		25,940		24,079	25,735
Restricted Fastracls		369,502		361,275	325,663
Restricted Deposits		1,503		1,504	1,502
Unrestricted		(165,410)		(207,306)	 (223,204
Total net position	\$	3,336,878	\$	3,463,506	\$ 3,413,509

In 2019, capital assets net of accumulated depreciation decreased \$9,362 for acquisition of revenue equipment, buildings, land, and construction in progress for the projects in the FasTracks program.

Current liabilities decreased \$17,214 (6.9%) in 2019 primarily due to lower volume of Ecopass 2020 contracts processed and reduction of construction contract retention.

Noncurrent liabilities and deferred inflows increased \$89,812 (2.1%) in 2019 primarily due to change in the Net Pension Liability recognition of deferred resources as require by GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*, and GASB Statement 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date.* 

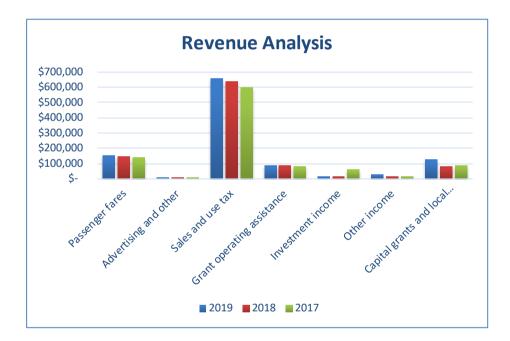
The net position of RTD decreased by \$126,628 (3.7%) during the current year compared to an increase of \$49,997 (1.5%) in the previous year. The decrease for 2019 was due to additional depreciation on assets that were placed in service during 2018 and 2019 due to the opening of additional rail lines as well as expensing interest costs on the Eagle P3 project that had previously been recorded as prepaid items. The 2018 increase was due to higher operating revenues, sales and use tax collections increases a one-time gain recognized for a bond refunding, net of increases in operating expenses and non-operating expenses.

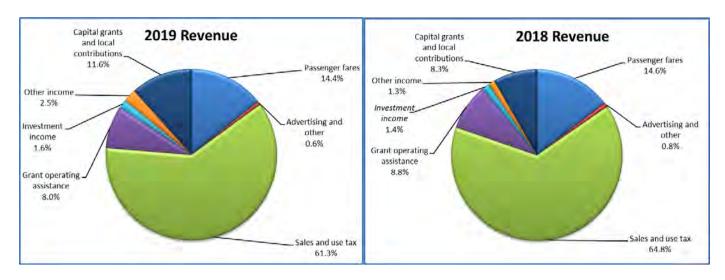
Summary of Reven	ues, Expenses, a	•	Net Pos		
		2019		2018	 2017
Operating revenue:		454.000		440.007	440.00
Passenger fares	\$	154,390	\$	143,231	\$ 140,21
Advertising and other		6,553		7,535	 7,15
Total operating revenue		160,943		150,766	 147,37
Operating expenses:					
Salaries and wages		196,505		183,899	172,53
Fringe benefits		54,569		52,993	91,44
Materials and supplies		54,983		51,335	44,68
Services		96,085		81,189	77,32
Utilities		17,823		16,419	16,50
Insurance		10,833		9,941	13,31
Purchased transportation		203,559		176,416	159,05
Leases and rentals		3,204		1,996	2,82
Miscellaneous		5,053		4,317	4,21
Depreciation		355,417		285,653	 248,63
Total operating expenses		998,031		864,158	 830,53
Operating loss		(837,088)		(713,392)	 (683,15
Nonoperating revenues (expenses):					
Sales and use tax		659,418		634,192	598,18
Grant operating assistance		86,263		86,403	80,41
Investment income		17,669		13,409	63,03
Other income/Gain on Sale of Assets		26,582		12,618	14,61
Interest expense		(200,845)		(62,770)	(65,34
Other expense/ Unrealized Loss on Assets		(3,124)		(1,465)	 (2,98
Net nonoperating revenue (expenses)		585,963		682,387	 687,92
Income before capital contribution		(251,125)		(31,005)	4,76
Capital grants and local contributions		124,497		81,002	 86,39
Increase in net position		(126,628)		49,997	91,15
NET POSITION, beginning of year		3,463,506		3,413,509	 3,322,35
NET POSITION, end of year	\$	3,336,878	\$	3,463,506	\$ 3,413,50

Statements of Revenues, Expenses, and Changes in Net Position–The following summary of revenues, expenses, and changes in net position shows the activities of RTD resulted in change of net position. The key elements of changes in net position for the fiscal years

The information contained in the condensed information table is used as the basis for the revenue and expense discussion presented below, surrounding RTD's activities for the fiscal years ended December 31, 2019, 2018 and 2017.

Revenue Analysis								
		2019		2018		2017		
Revenues								
Passenger fares	\$	154,390	\$	143,231	\$	140,217		
Advertising and other		6,553		7,535		7,159		
Sales and use tax		659,418		634,192		598,187		
Grant operating assistance		86,263		86,403		80,412		
Investment income		17,669		13,409		63,030		
Other income		26,582		12,618		14,618		
Capital grants and local contributions		124,497		81,002		86,395		
Total Revenues	\$	1,075,372	\$	978,390	\$	990,018		





**Passenger fares** – Passenger fares provided 14.4% and 14.6% of total revenues in 2019 and 2018, respectively. Farebox receipts, monthly and annual pass revenue, and special event fares for bus and rail services are included in passenger fares. Passenger fares increased by \$11,159 (7.8%) in 2019 compared to an increase of \$3,014 (2.1%) in 2018. Passenger fares changes in 2019 was due to fare increase in addition, the opening of the G Line and growth in the A Line ridership.

Advertising and other – Advertising and other revenue provided 0.6% and 0.8% of total revenues in 2019 and 2018; this includes revenues from advertisements primarily on RTD's buses and external wraps on light rail vehicles. Advertising and other income decreased \$982 (13.0%) in 2019 compared to an increase of \$376 (5.3%) in 2018. The decrease in 2019 was due ...The increase in 2018 was minimal. The increase in 2017 was due to an increase in advertising revenue related to a stronger economy, new rail lines and revenue for lease and naming rights.

**Sales and Use Tax** – Sales and use tax provided 61.3% and 64.8% of RTD's total revenues in 2019 and 2018 respectively. Sales and use tax is a dedicated 1.0% tax imposed on certain sales within the service area. Sales and use tax increased \$25,226 (4.0%) in 2019 compared to an increase of \$36,005 (6.0%) in 2018. In 2019and 2018, the District experienced growth in tax revenues due to increased consumer and business-spending activity as the District continues to experience population growth of 1.4% and 1.4%, low unemployment of 3.6% and 3.3% as well as growth in personal income of 5.3% and 5.4%, respectively.

**Grant operating assistance** – Grant operating assistance provided 8.0% and 8.8% of total revenues in 2019 and 2018. Grant operating assistance decreased \$140 (0.2%) in 2019 compared to an increase of \$5,991 (7.5%) in 2018. The operating assistance is a federal grant revenue program used to perform capital maintenance and maintain RTD's revenue fleet of bus, paratransit, and rail vehicles. The revenue the result of grant funding sources being available during the year.

**Investment Income** – Investment income provided 1.6% and 1.4% of total revenues in 2019 and 2018. Investment income increased \$4,260 (31.8%) in 2019 compared to a decrease of \$49,621 (78.7%) in 2018. The increase in 2019 was due to fixed securities getting better yields. The decrease in 2018 was due to the 2017 gain from extinguishment of debt.

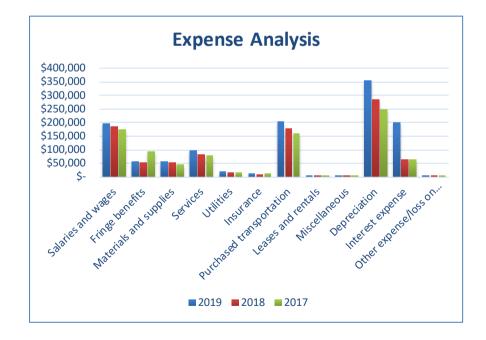
**Other Income/Gain on sale of Assets** – Other income provided 2.5% and 1.3% of total revenues in 2019 and 2018. Other income increased \$13,964 (110.7%) in 2019 compared to a decrease of \$2,000 (13.7%) in 2018. Other income includes interest subsidy income, rental income from retail space, parking, and miscellaneous other items. The increase in 2019 was primarily due to insurance refunds and other miscellaneous items. The decrease in 2018 was due to a onetime gain on asset disposals in 2017.

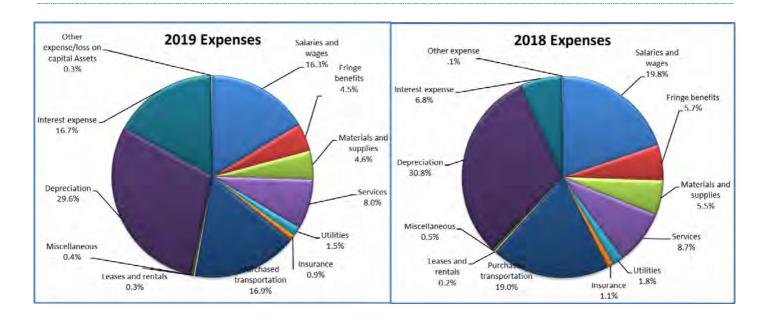
**Capital grants and local contributions** – Capital grants and local contributions provided 11.6% and 8.3% of total revenues in 2019 and 2018. Capital grants and local contributions increased \$43,495 (53.7%) in 2019 and decreased \$5,393 (6.2%) in the previous year. The

increase in 2019 was due to Eagle P3 FFGA grant funding appropriations. The decrease in 2018 was a result of lower capital contributions related to completion of major construction projects.

**Expenses** - The following schedule and charts shows the major sources of expenses for the years ended December 31, 2019, 2018 and 2017.

	Expens	se Analysis		
		2019	 2018	 2017
Expenses				
Salaries and wages	\$	196,505	\$ 183,899	\$ 172,535
Fringe benefits		54,569	52,993	91,442
Materials and supplies		54,983	51,335	44,686
Services		96,085	81,189	77,323
Utilities		17,823	16,419	16,503
Insurance		10,833	9,941	13,319
Purchased transportation		203,559	176,416	159,051
Leases and rentals		3,204	1,996	2,829
Miscellaneous		5,053	4,317	4,213
Depreciation		355,417	285,653	248,633
Interest expense		200,845	62,770	65,346
Other expense/loss on capital Assets		3,124	 1,465	 2,981
Total Expenses	\$	1,202,000	\$ 928,393	\$ 898,861





**Salaries and wages**–Salary and wage expense is one of the largest expense category accounting for 16.3% and 19.8% of the total RTD expenses in 2019 and 2018, respectively. Salary and wage expenses increased by \$12,606 (6.9%) in 2019 compared to an increase of \$11,364 (6.6%) in 2018. Increases in both years occurred from salary and wage performance (result based) and progression increases, and additional service provided with the openings of new rail lines.

**Benefits** – Fringe benefits accounted for 4.5% and 5.7% of total expenses in 2019 and 2018. Fringe benefits increased by \$1,576 (3.0%) in 2019 compared to a decrease of \$38,449 (42.0%) in 2018. The fluctuations for both 2019 and 2018 is primarily due to implementation GASB Statement Nos. 68 and 71 that establish standards for measuring and recognizing net pension liabilities.

**Materials and supplies** – The materials and supplies expense category accounted for 4.6% and 5.5% of the total expenses in 2019 and 2018 respectively. Materials and supplies expenses increased \$3,648 (7.1%) in 2019 compared to an increase of \$6,649 (14.9%) in 2018. The fluctuations for both 2019 and 2018 is primarily due to higher diesel fuel, gas prices and opening of new rail lines.

**Services** – Services expense accounted for 8.0% and 8.7% of total expenses in 2019and 2018. Services expense includes contracted services such as security services; vehicle, equipment and right of way maintenance services; advertising and marketing services, and legal services. Services expense increased \$14,896 (18.3%) in 2019 compared to an increase of \$3,866 (5.0%) in 2018. The increase in 2019 and 2018 was due to increased contractual increases and additional security services due to opening of new rail lines.

**Utilities** – Utilities accounted for 1.5% and 1.8% of total expenses in 2019 and 2018. Utilities expense includes electric, telecommunications, water and sewer, and natural gas for facilities. Utilities expense increased \$1,404 (8.6%) in 2019 compared to a decrease of \$84 (0.5%) in 2019. The increase in 2019 occurred primarily due to traction power costs due to the opening of the Gold commuter rail line. The decrease in 2018 was negligible.

**Insurance** – Insurance accounted for 0.9% and 1.1% of total expenses in 2019 and 2018. Insurance expense includes RTD's self-insured cost for general liability and worker's compensation claims. In addition, RTD purchased insurance in its efforts to protect assets. Insurance expense increased \$892 (9.0%) in 2019 compared to a decrease of \$3,378 (25.4%) in 2018. The variation in both years 2019 and 2018 was due fluctuating frequency and severity of claims.

**Purchased transportation** – The purchased transportation expense category accounted for 16.9% and 19.0% of the total expenses in 2019 and 2018. Purchased transportation represents the costs of contracted transportation services for bus, commuter rail, access-a-Ride, and FlexRide services. Purchased transportation costs increased \$27,143 (15.4%) in 2019 compared to an increase of \$17,365 (10.9%) in 2018. The increase in 2019 and 2018 was due to a higher scheduled payments to DTP including TABOR – secured payments as well as the opening of rail lines.

Leases and rentals – Leases and rentals include lease expense for office space, office equipment, park-n-Ride facilities, and use of communication towers. Leases and rentals expense increased \$1,208 (60.5%) in 2019 compared to a decrease of \$833 (29.4%) in 2018. The increase in 2019 was due to additional lease space for North Metro operation startup. The decrease in 2018 was primarily due to RTD's reduction of office space due to completion of FastTracks projects.

**Miscellaneous** – Miscellaneous expense includes other incidental operating expenses not included in other defined categories. Miscellaneous expenses increased \$736 (17.0%) in 2019 compared to an increase of \$104 (2.5%) in 2018. This category includes additional one-time project expenses creating fluctuations between years.

**Depreciation** – The depreciation expense category accounted for 29.6% and 30.8% of the total expenses in 2019 and 2018, respectively. Depreciation expense is a non-cash systematic allocation of the cost of capital assets over the estimated useful life of the assets. Depreciation expense increased \$69,764 (14.9%) in 2018 compared to an increase of \$37,020 (14.9%) in 2018. The increase in both 2019 and 2018 occurred primarily due to the FasTracks assets that were placed in revenue service.

**Interest expense** – The interest expense category accounted for 16.7% and 6.8% of the total expenses in 2019 and 2018, respectively. Interest expense increased \$138,075 (24.4.0%) in 2019 compared to a decrease of \$2,576 (3.9%) in 2018. The increase in 2019 was due to Eagle P3 recognition of interest expense. The decrease in 2018 is due to reduced principal resulting in a decrease in interest expense.

**Other expense** – Other expense includes miscellaneous non-operating expenses not classified in other expense categories. Other expense increased \$1,659 (113.2%) in 2019 compared to a decrease of \$1,516 (50.9%) in 2018. The increase in cost for 2019 was due to retirement of capital assets resulting in a loss. The decrease in 2018 was primarily due to no issuance costs in 2018 compared to 2017 issuance costs for 2017A/2017B Sales Tax FasTracks Revenue Bonds.

**Capital Assets** – Investments in capital assets include: land and rights-of-way; buildings and improvements; leasehold improvements; revenue and non-revenue vehicles; shop and service equipment; security and surveillance equipment; computer equipment; and furniture. RTD's investment in capital assets, net of accumulated depreciation, in 2019 was \$6,841,843 compared to \$6,851,205 in 2018. The decrease in capital assets in 2019 was \$9,362 (0.1%) compared to an increase of \$47,169 (0.7%) in 2018. RTD acquires its assets with sales and use tax revenues, farebox revenue, federal capital grants, and proceeds from the sale of revenue bonds and certificates of participation. The decrease in 2019 was due primarily retirement of capital assets, primarily revenue earning equipment and additional depreciation of assets placed in service with new rail line openings. The increase 2018 was primarily due to the cost of planning, design and construction of FasTracks projects and fleet acquisition.

The following table summarizes capital assets, net of accumulated depreciation, as of December 31, 2019 and 2018 with comparative information for 2017.

Capital Assets (Net of Depreciation)							
	2019	2018	2017				
Land	\$789,639	\$741,541	\$742,384				
Land improvements	5,089,458	4,181,583	3,979,316				
Buildings	664,678	637,720	604,642				
Revenue earning equipment	1,323,153	1,219,967	1,216,116				
Shop, maintenance and other equipment	335,707	310,316	289,390				
Construction in progress	988,547	1,802,235	1,749,244				
Total	\$9,191,182	\$8,893,362	\$8,581,092				
Less accumulated depreciation:							
Land improvements	1,347,276	1,133,755	966,442				
Buildings	265,306	243,160	227,186				
Revenue earning equipment	523,983	475,388	426,462				
Shop, maintenance and other equipment	212,774	189,854	156,966				
Total accumulated depreciation	2,349,339	2,042,157	1,777,056				
Total capital assets being							
depreciated, net	5,063,657	4,307,429	4,312,408				
Capital assets, net	\$6,841,843	\$6,851,205	\$6,804,036				

Major capital asset events during the 2019 fiscal year included the following:

**FasTracks North Metro Corridor** - The North Metro Corridor is an 18-mile rail transit corridor between Denver Union Station and 162<sup>nd</sup> Avenue, passing through Denver, Commerce City, Thornton, Northglenn and unincorporated Adams County. A construction contract was entered to complete the commuter rail line from DUS north to 124<sup>th</sup> Avenue by 2019 with an option to extend construction to 162<sup>nd</sup> Avenue if additional funding is identified.

#### East and Gold Line Public-Private Partnership (Eagle P3) -

RTD was selected for inclusion in the FTA Public-Private Partnership Pilot Program (Penta-P). In 2010, RTD entered into a public-private partnership to design, build, finance, operate and maintain several of the transit improvements contemplated under the FasTracks program. The Eagle P3 project is a \$2,185,000 project that includes a Commuter Rail Maintenance Facility, the East and Gold Line Corridors as well as the Northwest Rail Electrified Segment. The Eagle P3 partnership was awarded to a concessionaire, Denver Transit Partners (DTP), through a competitive bid process culminating in a contract price that was \$305,000 below internal estimates. The project was fully in revenue service in 2019.

The Eagle P3 project will be completed in two phases. Phase I includes the East Corridor, Commuter Rail Maintenance Facility and design work for Phase II. Phase II includes the Gold Line Corridor and the Northwest Electrified Rail Segment. The Eagle P3 Project elements are described below:

**FasTracks East Corridor** - The East Corridor is a 23.6-mile commuter rail transit corridor between Denver Union Station and Denver International Airport. The East Corridor opened for revenue service in April 2016.

**FasTracks Commuter Rail Maintenance Facility** - The Commuter Rail Maintenance Facility is designed to service the four planned commuter rail corridors (East Corridor, Gold Line, North Metro, and Northwest Rail) included in the FasTracks plan. The Facility opened in 2015.

**FasTracks Gold Line Corridor** - The Gold Line Corridor is an 11.2-mile rail transit corridor between Denver Union Station to the vicinity of Ward Road, passing through northwest Denver, unincorporated Adams County, Arvada, and Wheat Ridge. The Gold Line opened for revenue service in 2019.

**FasTracks Northwest Electrified Rail Segment** – The Northwest Rail Corridor, described previously, includes a project segment, referred to as the Northwest Electrified Rail Segment, extending from Denver Union Station to Westminster. This segment opened for revenue service in Summer 2016.

**FasTracks I-225 Rail Line** – The I-225 Rail Line is a 10.5-mile extension of RTD's existing light rail line from the Southeast Line Nine Mile Station to the East Line commuter rail transfer point near the intersection of Peoria Street and Smith Road. The project includes eight stations and serves the Aurora City Center and the Anschutz/Fitzsimons Medical Campus. This line opened for revenue service in February 2017.

**FasTracks Southeast Rail Extension** – The Southeast Rail Extension extends the popular Southeast Rail Line from Lincoln Station to the new RidgeGate Parkway Interchange at I-25. The project will add 2.3 miles of light rail. New stations will be built at Sky Ridge Medical Center, Lone Tree City Center and RidgeGate with a 1,300 space Park-n-Ride facility. In 2018, expenditures related to the Southeast Rail Extension were \$32,848. The project opened for revenue service in 2019.

Additional information on RTD's capital assets can be found in footnote D of this report.

#### **Debt Administration**

The following table summarizes outstanding debt obligations as of December 31, 2019 and 2018 with comparative information for 2017.

Outstanding Debt							
		2019		2018		2017	
Bonds and COPs payable:							
Sales Tax Revenue Bonds	\$	2,067,664	\$	2,072,489	\$	2,088,744	
Certificates of Participation		1,089,312		1,137,932		1,176,397	
Total Principal		3,156,976		3,210,421		3,265,141	
Issuance premiums and discounts		226,333		242,082		256,150	
Debt net of issuance and refunding	\$	3,383,309	\$	3,452,503	\$	3,521,291	

**Outstanding debt** – Outstanding debt includes sales tax revenue bond, a Transportation Infrastructure and Innovation Act (TIFIA) loan, certificates of participation, and a Purchase and Assignment Agreement. The 2019 outstanding debt was \$3,383,309 compared to \$3,452,503 in 2018. Outstanding debt decreased by \$69,194 (2.0%) in 2019 and decreased by \$68,788 (2.0%) in 2018. The decrease in 2019 and 2018 was due to payment of principal on outstanding debt.

**Sales tax revenue bonds** – RTD issues sales tax revenue bonds to fund the acquisition and construction of assets. The sales tax revenue bonds were \$2,067,664 and \$2,072,489 as of December 31, 2019 and 2018, respectively. The sales tax revenue bonds decreased \$4,825 (0.2%) in 2019 compared to a decrease of \$16,255 (0.8%) in 2018. The decrease in 2019 and 2018 was due to payment of principal on outstanding debt.

**Certificates of participation** - Certificates of participation relate to financial obligations issued by the Asset Acquisition Authority, Inc. (Authority), a nonprofit corporation. The Authority issued Certificates of Participation (Certificates) with the proceeds being used to acquire certain equipment and facilities to be used by RTD. RTD leases the equipment acquired with the proceeds from the Certificates under separate Master Lease Purchase Agreements. For financial reporting purposes, RTD accounts for the Certificates as its own debt. Certificates outstanding were \$1,089,312 and \$1,137,932 as of December 31, 2019 and 2018, respectively. The Certificates outstanding decreased \$48,620 (4.3%) in 2018 compared to a decrease of \$38,465 (3.3%) in 2018. The decrease in 2019 and 2018 is due to principal payment reducing debt.

RTD maintains credit ratings from Standard & Poor Corporation, Moody's Investor Services, and Fitch Ratings. Credit ratings vary based on the type of debt and the source of funds used for repayment.

RTD's ratings are presented in the following table:

Rating Agency	Base System Bonds 0.6% Sales &Use Tax	FasTracks Bonds 0.4% Sales& Use Tax	Certificates of Participation
Standard			
&Poor's	AAA	AA+	А
Moody's	Aa1	Aa2	Aa3
Fitch	AA	AA	AA-

Additional information on RTD's debt can be found in footnote E of this report.

#### Economic Factors and Subsequent Events after adoption of the 2020 Budget

RTD is dependent on sales and use taxes, which are the largest single source of revenue for RTD, representing 61.3% and 64.8% of the total revenues in 2019 and 2018, respectively. Sales and use tax revenues are affected by the local economy in which changes will affect the level of funding available to RTD during its fiscal year.

RTD is dependent on passenger fares collected for transit services provided. Passenger fares accounted for 14.4% and 14.6% of total revenues in 2019 and 2018, respectively. Passenger fare collections may be affected by fare levels charged by RTD.

RTD is dependent on federal and local grant funding as well as local capital contributions for both operations and capital expenditures. Grants and local contributions provided 19.6% and 17.1% of total revenues in 2019 and 2018, respectively. Grant funding and local capital contributions are only available for use by RTD for qualifying expenditures after appropriation is made by the awarding agency.

Each year, RTD proposes an Amended Budget at mid-year to the Board of Directors for appropriation in order to adjust revenue and expenditures for the remainder of the fiscal year according to existing economic conditions and fiscal results. RTD may also present budget amendments to the Board of Directors for approval at any time during the fiscal year to accommodate economic factors.

In July 2019, the Board of Directors approved the 2019 Amended Budget in which the primary changes driven by economic factors were lower than anticipated sales and use tax collections and certain contractual increases in labor costs due to the tight labor market.

RTD is in various phases of construction and testing on the Southeast Rail Extension (SERE), the North Metro rail line. This FasTracks project is expected to open for revenue service during the next few years. Additional funding for other capital projects within the FasTracks project scope have been deferred due to a lack of funding.

#### **Requests for Information**

This financial report is intended to provide an overview of RTD's finances for those with an interest in this organization. Questions concerning any information contained in this report may be directed to the Finance Division.

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**BASIC FINANCIAL STATEMENTS** 

REGIONAL TRANSPORTATION DISTRICT STATEMENTS OF NET POSITION As of December 31, (In Thousands)

	 2019		2018		
ASSETS AND DEFERRED OUTFLOWS OF RESOURCES					
Current Assets:					
Cash and cash equivalents	\$ 343,514	\$	260,906		
Marketable interest bearing investments (note B)	53,895		67,503		
Receivables:					
Sales tax	119,300		113,329		
Other, less allowance for doubtful accounts of \$358 and					
\$384 at December, 31 2019 and 2018, respectively	13,696		15,534		
Grants	63,448		16,279		
Inventories	33,354		31,103		
Other current assets (note C)	9,495		86,146		
Cash and cash equivalents - restricted	130,818		124,222		
Marketable interest bearing investments - restricted (note B)	 17,880		107,530		
Total current assets	 785,400		822,552		
Noncurrent Assets:					
Capital assets (note D):					
Land	789,639		741,541		
Land improvements	5,089,458		4,181,583		
Buildings	664,678		637,720		
Revenue earning equipment	1,323,153		1,219,967		
Shop, maintenance and other equipment	335,707		310,316		
Construction in progress	 988,547		1,802,235		
Total capital assets	9,191,182		8,893,362		
Less accumulated depreciation	 (2,349,339)		(2,042,157)		
Net capital assets	 6,841,843		6,851,205		
Other Noncurrent Assets:					
Long-term marketable interest bearing investments - restricted (note B)	89,906		76,027		
Long-term marketable interest bearing investments - unrestricted (note B)	 22,856		70,356		
Total other noncurrent assets	 112,762		146,383		
Total noncurrent assets	 6,954,605		6,997,588		
Total assets	 7,740,005		7,820,140		
Deferred Outflows of Resources:					
Debt related (note A)	33,506		36,547		
Pension related (note A and F)	73,338		44,192		
Total deferred outflows of resources	 106,844		80,739		
		-			

REGIONAL TRANSPORTATION DISTRICT STATEMENTS OF NET POSITION (CONTINUED) As of December 31, (In Thousands)

	2019		 2018		
LIABILITIES AND DEFERRED INFLOWS OF RESOURCES					
Current Liabilities:					
Accounts and contracts payable	\$	85,337	\$ 104,357		
Current portion of long-term debt payable from restricted assets					
(note E)		78,128	67,335		
Accrued compensation (note F)		25,805	23,868		
Accrued interest payable from restricted assets		17,840	18,689		
Other accrued expenses		25,629	 35,704		
Total current liabilities		232,739	249,953		
Noncurrent Liabilities:					
Long-term debt, net (note E)		3,305,181	3,385,168		
Net Pension Liability (note F)		319,177	268,278		
Other liabilities (note E)		594,137	 429,981		
Total noncurrent liabilities		4,218,495	 4,083,427		
Total liabilities		4,451,234	 4,333,380		
Deferred Inflows of Resources:					
Debt related (note A)		416	485		
Pension related (note A and F)		58,321	 103,508		
Total deferred inflows of resources		58,737	 103,993		
NET POSITION					
Net investment in capital assets (note I)		2,987,538	3,144,175		
Restricted debt service (note I)		117,805	139,779		
Restricted TABOR (note I)		25,940	24,079		
Restricted Fastracks (note I)		369,502	361,275		
Restricted Deposits (note I)		1,503	1,504		
Unrestricted net position (note I)		(165,410)	(207,306)		
Total net position	\$	3,336,878	\$ 3,463,506		

#### REGIONAL TRANSPORTATION DISTRICT STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION Years ended December 31,

(In Thousands)

	2019		2018	
OPERATING REVENUE:				
Passenger fares	\$	154,390	\$ 143,231	
Advertising, rent, and other		6,553	7,535	
Total operating revenue		160,943	150,766	
OPERATING EXPENSES:				
Salaries and wages		196,505	183,899	
Fringe benefits		54,569	52,993	
Materials and supplies		54,983	51,335	
Services		96,085	81,189	
Utilities		17,823	16,419	
Insurance		10,833	9,941	
Purchased transportation		203,559	176,416	
Leases and rentals		3,204	1,996	
Miscellaneous		5,053	4,317	
Depreciation		355,417	285,653	
Total operating expenses		998,031	864,158	
OPERATING LOSS		(837,088)	(713,392)	
NONOPERATING REVENUE (EXPENSES):				
Sales and use tax		659,418	634,192	
Grant operating assistance (note A)		86,263	86,403	
Investment income		17,669	13,409	
Other income		26,582	12,618	
Gain(Loss) on capital assets		(2,452)	(1,449)	
Interest expense (note A)		(200,845)	(62,770)	
Other expense		(672)	(16)	
Net nonoperating revenue (expenses)		585,963	682,387	
INCOME (LOSS) BEFORE CAPITAL GRANTS				
AND LOCAL CONTRIBUTIONS		(251,125)	(31,005)	
Capital grants and local contributions (note A)		124,497	81,002	
INCREASE IN NET POSITION		(126,628)	49,997	
NET POSITION, beginning of year		3,463,506	3,413,509	
NET POSITION, end of year	\$	3,336,878	\$ 3,463,506	

#### REGIONAL TRANSPORTATION DISTRICT STATEMENTS OF CASH FLOW Years ended December 31, (In Thousands)

	2019		2018	
Cash flows from operating activities:				
Receipts from customers	\$	152,774	\$	148,935
Payments to suppliers		(121,105)		(454,055)
Payments to employees		(323,470)		(161,961)
Net cash used in operating activities		(291,801)		(467,081)
Cash provided from noncapital financing activities:				
Grant operating assistance		86,263		86,403
Sales and use tax collections		653,447		627,087
Other revenue		26,582		12,618
Net cash provided by noncapital financing activities		766,292		726,108
Cash flows from capital and related financing activities:				
Principal paid on long-term debt		(146,475)		(64,700)
Proceeds from issuance of debt		93,030		9,980
Issuance Premiums/Discounts		(15,749)		(14,068)
Capital grant funds and other contributions received		77,328		107,172
Proceeds from sale of assets		1,713		808
Acquisition and construction of capital assets		(315,916)		(267,869)
Cost of issuance		(740)		
Interest paid on long-term debt		(233,026)		(126,143)
Net cash used in capital and				
related financing activities		(539,835)		(354,820)
Cash flows from investing activities:				
Purchases of investments		(11,227)		(58,123)
Proceeds from sales and maturities of investments		148,106		63,206
Interest and dividends on investments		17,669		13,409
Net cash provided by investing activities		154,548		18,492
INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS		89,204		(77,301)
Cash and cash equivalents - January 1		385,128	. <u> </u>	462,429
Cash and cash equivalents - December 31	\$	474,332	\$	385,128

#### REGIONAL TRANSPORTATION DISTRICT STATEMENTS OF CASH FLOWS (CONTINUED) Years ended December 31, (In Thousands)

RECONCILIATION OF OPERATING LOSS TO NET CASH		2019	2018		
USED IN OPERATING ACTIVITIES:	\$	(007 000)	è	(712 202)	
Operating loss	Ŷ	(837,088)	Ş	(713,392)	
Adjustment to reconcile operating loss to					
net cash used in operating activities					
Depreciation expense		355,417		285,653	
Bad debt expense		68		(16)	
Changes in operating assets and liabilities:					
Decrease in other accounts receivable		1,838		2,690	
Increase(decrease) in inventories		(2,251)		2,090	
Decrease(increase) in other current assets		76,651		(32,520)	
Decrease in deferred outflow pension		(29,146)		10,125	
Increase(decrease) in accounts payable		196,035		(103,047)	
Increase in accrued compensation and expenses		1,937		1,081	
Decrease/(increase) in other accrued expenses		(10,075)		(4,505)	
Increase in deferred inflow pension		(45,187)		84,760	
Net cash used in operating activities	\$	(291,801)	\$	(467,081)	
RECONCILIATION OF CASH and CASH EQUIVALENTS:					
Cash and cash equivalents	\$	343,514	\$	260,906	
Cash and cash equivalents - restricted		130,818		124,222	
Total cash and cash equivalents	\$	474,332	\$	385,128	

Noncash investing, capital and financing activities:

RTD had unrealized Gain/loss on investments of \$26 and \$28 for 2019 and 2018, respectively.

RTD received noncash local match contributions for federal grants of \$389 and \$342 for 2019 and 2018, respectively.

RTD recognized deferred inflow/outflow for debt of \$3 and \$4 for 2019 and 2018, respectively.

The accompanying notes are an integral part of these statements.

NOTES TO FINANCIAL STATEMENTS

## NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### 1. Organization

The Regional Transportation District (RTD) was created as a transportation planning agency, a political subdivision of the State of Colorado, by an Act of the Colorado General Assembly (the Act), effective July 1969 (Title 32, Article 9, C.R.S., 1973, as amended). In 1974, the Act was amended and RTD became an operating entity charged with the responsibility for development, operation and maintenance of a public mass transportation system for the benefit of the citizens of the District. The District is comprised of 15 separate districts located in Denver, Boulder, Broomfield and Jefferson counties, and certain portions of Adams, Arapahoe, Douglas, and Weld counties.

RTD is governed by a publicly elected board of directors consisting of 15 members. Each board member is elected to serve a term of four years by the constituents of the district in which the board member resides. As required by Generally Accepted Accounting Principles (GAAP), these financial statements present RTD and its component unit. The component unit discussed in note A.2 is included in the RTD's reporting entity because of the significance of its operational or financial relationship with the District.

In 1988, a Senate Bill was enacted (privatization legislation) requiring RTD to implement by March 31, 1989, a plan to competitively bid contracts for the provision of at least 20% of RTD's bus service by private contractors. In 1999, the Bill was amended requiring RTD to increase this provision to at least 35% of fixed route bus service. In 2003, the Bill was amended to require that at least 50% of RTD's vehicular service be operated by private transit companies. In May of 2007, the legislation was amended to provide for "a system under which up to 58% of the District's service" is provided by private contractors.

### 2. Financial Reporting Entities

### Blended Component Unit

The Asset Acquisition Authority, Inc. (the Authority) was formed in 1987 as a nonprofit corporation on behalf of RTD for the purpose of issuing certificates of participation in a public offering collateralized by an installment purchase agreement with RTD. RTD's General Manager appoints the Board of Directors of the Authority. The Authority serves as a financing mechanism for various financing arrangements for RTD. RTD follows pronouncements 14 and 61 issued by the Governmental Accounting Standards Board which provides guidance regarding the inclusion of component units in the primary government's financial statement presentation. The activity related to the underlying financial obligations of the Authority has been included as a blended component unit in RTD's financial statements for the years ended December 31, 2018 and 2017. No separately audited financial statements are prepared for the Authority.

### 3. Basis of Accounting

The accounts of RTD are reported as a Proprietary Fund. Proprietary funds are accounted for on the flow of economic resources measurement focus and use the accrual basis of accounting which reports all assets, deferred outflows of resources, liabilities, deferred inflows of resources, revenues, expenses, gains and losses. Revenue is recognized when earned and expenses are recorded at the time liabilities are incurred. Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of RTD are charges to customers for services. Operating expenses include the cost of services, administrative expenses and asset depreciation. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

It is RTD's policy to apply GAAP in its presentation of financial statements. When both restricted and unrestricted resources are available for use, it is RTD's policy to use restricted resources first, then unrestricted resources as they are needed.

## 4. Cash Equivalents

RTD considers all highly liquid investments, both restricted and unrestricted, with an original maturity of three months or less when purchased to be cash equivalents.

### 5. Interest Bearing Investments

Investments with a maturity date, when purchased, of less than one year are carried at cost or amortized cost which approximates fair value. Investments with a maturity date of more than one year from the date of purchase are carried at fair value.

## 6. Inventories

Inventories consist primarily of materials and supplies used in the ordinary course of operations. Materials and supplies are stated at cost using the FIFO (first-in, first-out) method.

## 7. Other Current Assets

Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items. Escrows are deposits held in escrow during the period of construction. At the time projects are completed, escrows are generally applied toward the cost of the project or may be forfeited by RTD upon breach of contract.

## 8. Receivables

Accounts receivable are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollected amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to accounts receivable. Changes in the valuation allowance have not been material to the consolidated financial statements.

## 9. Restricted Assets

Restricted assets are assets restricted by the covenants of long-term financial arrangements.

10. Capital Assets

Property and equipment are stated at historical cost. Capital assets are defined by RTD as assets with an initial, individual cost of more than \$5 and an estimated useful life in excess of one year. Maintenance and repairs are charged to current period operating expenses and improvements are capitalized. Upon retirement or other disposition of property and equipment, the cost and related accumulated depreciation are removed from the respective accounts and any gains or losses are included in non-operating revenue and expense. A pro rata share of proceeds from the sale of property and equipment, which were acquired with federal funds, is required to be invested in a similar asset.

Interest is capitalized on assets financed with debt or certificates of participation from the date of the borrowing until completion of the project. The amount of tax-exempt and taxable debt and certificates of participation (externally restricted) interest to be capitalized is the difference between the interest expense and interest earnings on issuance proceeds. The amount of other interest to be capitalized is calculated by weighted average construction expenditures multiplied by the weighted average interest rate of the outstanding obligations.

Total interest cost of RTD consisted of the following as of December 31:

	2	2019	2018		
Interest expense Capitalized interest		200,845 34,305	\$	62,770 67,211	
Total interest cost	\$	235,150	\$	129,981	

## 11. Depreciation

Depreciation of property and equipment is computed using the straight-line method over the estimated useful lives of the assets, which are as follows:

Land improvements	10–20 years
Buildings	30 years
Revenue earning equipment	8–25 years
Shop, maintenance and other equipment	3–10 years

Fully depreciated assets, which are still in use, are included in the asset balances in the accompanying financial statements. The cost of fully depreciated assets was approximately \$417,209 and \$378,780 at December 31, 2019 and 2018, respectively.

## 12. Deferred Outflows/Inflows of Resources

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflow of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and thus, will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time.

### 13. Compensated Absences

RTD employees receive compensation for vacations, holidays, illness, and certain other qualifying absences. The number of days compensated in the various categories of absence is based generally on length of service. Compensated absences, which have been earned but not paid, have been accrued in the accompanying financial statements.

### 14. Self-Insurance

Liabilities for property damage and personal injury are recognized as incurred on the basis of the estimated cost to RTD. In addition, RTD offers a self-insured health benefit option as part of its employee benefits program in which costs are recognized as they are incurred.

#### 15. Revenue Recognition

#### **Passenger Fares**

Passenger fares are recorded as revenue at the time services are performed and revenue is collected from the farebox. Sale of MyRide stored value, Mobile ticketing products, monthly passes, ten/six ride and day pass tickets are recorded as income at the time of sale. Sales of college based passes, which are valid for a specific academic semester, are recorded initially as unearned revenue. Sales are recognized as income at the end of each month, with the amount recognized in each month determined by prorating the total contract amount over the semesters/quarters covered. Sales of Eco Pass and Neighborhood Pass, which are valid through December 31 of a given year, are recorded initially as unearned revenue. Sales are recognized as income at the end of each month, with the total contract amount prorated evenly over the number of months of the contract.

### **Sales and Use Taxes**

Under the provisions of the Act, as amended, RTD levies a sales tax of 1.0% on net taxable sales made within the District and a use tax of 1.0% on items purchased for use inside the District. As described in Note E, under the terms of the Sales Tax Revenue Bonds, Series 2007A, Series 2010B, Series 2012A, Series 2013A, 2016A, 2017A, 2017B and 2019A bond resolutions, and TIFIA Sales Tax, sales and use tax revenue is pledged for payment of debt service. Sales and use taxes are collected by the State of Colorado, Department of Revenue and are remitted to a trustee who satisfies debt service from the collections, as required under RTD's bond resolutions, and remits the balance to RTD.

Sales and use taxes are recorded as revenue by RTD in the month collected by the merchant. Sales and Use Tax Bonds debt service will be paid from the collateralized sales and use tax revenues in the amount of approximately \$3,704,464 through 2050. Principal and interest paid for the current year and pledged revenues received were \$104,377.

### **Grants and Local Contributions**

RTD receives grants from the federal government, through the Federal Transit Administration (FTA). Grants are also awarded to RTD by state of Colorado through the Colorado Department of Transportation. The federal and state governments issue grants to RTD for operations and acquisition of property and equipment.

The amount recorded as capital grant revenue was \$116,303 and \$52,229 in 2019 and 2018, respectively. Operating assistance grant revenue was \$86,263 and \$86,403 in 2019 and 2018, respectively. Other contribution revenue was \$8,194 and \$28,773 in 2019 and 2018, respectively.

Grants and local contributions are recorded as revenue by RTD once all applicable eligibility requirements are met.

16. Use of Estimates

The financial statements contained herein have been prepared in accordance with US Generally Accepted Accounting Principles (GAAP). GAAP are uniform minimum standards of and guidelines to financial accounting and reporting. GAAP establishes appropriate measurement and classification criteria for financial reporting. Adherence to GAAP provides a reasonable degree of comparability among the financial reports of state and local governmental units. The preparation of financial statements in accordance with GAAP involves the use of management's estimates. These estimates are based upon management's best judgments, after considering past and current events and assumptions about future events. Actual results may differ from estimates.

### 17. Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the pension plan's fiduciary net position and additions to/deductions from the plan's fiduciary net position have been determined on the same basis as they are reported by

the plan. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

### 18. TABOR (Taxpayer's Bill of Rights) – Reserve Composition

Restricted net position represents amounts constrained by external parties or legislation. In 1992, Colorado voters approved an amendment to the state constitution referred to as the TABOR (Taxpayer's Bill of Rights) Amendment in which certain annual limitations were placed on the growth of government revenues. The Amendment also requires that an Emergency Reserve, referred to as Restricted TABOR, of 3.0% of fiscal year spending excluding debt service be maintained for all years subsequent to 1994 for declared emergencies.

## NOTE B – DEPOSITS AND INVESTMENTS

#### Deposits

RTD's deposits are subject to the State of Colorado's Public Deposit Protection Act (PDPA). Under this act, all uninsured public deposits at qualified institutions are fully collateralized with pledged collateral which is held in custody by any Federal Reserve Bank or branch thereof, or held in escrow by some other bank in a manner as the banking Commissioner shall prescribe by rule and regulation, or may be segregated from the other assets of the eligible public depository and held in its own trust department. Colorado's PDPA requires that pledged collateral to be held is clearly identified as being security maintained or pledged for the aggregate amount of public deposits accepted and held on deposit by the eligible public depository. The depository has the right at any time to make substitutions of eligible collateral maintained or pledged and is at all times entitled to collect and retain all income derived from those investments without restrictions.

As of December 31, 2019 and 2018, respectively, RTD had bank deposits of \$5,861 and \$33,514 collateralized with securities held by the pledging financial institutions' trust department or agent but not in RTD's name.

#### Investments

At December 31, 2019, the Regional Transportation District's investments consisted of the following:

Investment Type	Fair Value	< 6 Months	6-	12 Months	1-5 Years
U.S. Treasury Securities	\$ 149,007	\$ 21,419	\$	28,396	\$ 99,192
U.S. Agency Securities	27,279	8,952		8,392	9,935
Municipal Bonds	207	-		-	207
Corporate bonds	 8,044	4,271		346	3,427
Total	\$ 184,537	\$ 34,642	\$	37,134	\$ 112,761

At December 31, 2018, the Regional Transportation District's investments consisted of the following:

Investment Type	Fair Value	< 6 Months	6-	12 Months	1-5 Years
U.S. Treasury Securities	\$ 265,859	\$ 50,778	\$	106,318	\$ 108,763
U.S. Agency Securities	35,445	8,262		559	26,624
Municipal Bonds	683	339		144	200
Corporate bonds	 19,429	2,994		5,639	10,796
Total	\$ 321,416	\$ 62,373	\$	112,660	\$ 146,383

*Interest Rate Risk,* as a means of limiting its exposure to fair value losses arising from rising interest rates, RTD's investment policy limits maturities of individual investment securities to 5 years, unless otherwise authorized by RTD's Board of Directors.

Credit Risk, investment transactions are made in accordance with the Colorado Revised Statutes (CRS) 24-75-601, et seq.

The types of investments, which are authorized by RTD's internal investment policy, include the following:

- 1. Obligations of the United States government.
- 2. Obligations of the United States government agencies and United States government sponsored corporations.
- 3. Municipal notes or bonds that are an obligation of any state of the United States.
- 4. Corporate Bonds that are an obligation of corporations or financial institutions organized and operating in the United States.

- 5. Commercial paper.
- 6. Time Deposits/Time Certificates of Deposits.
- 7. Bankers' Acceptances Notes.
- 8. Repurchase agreements.
- 9. Money market funds.
- 10. Local government Investment Pools.
- 11. Any other Investment permitted under CRS 24-75-601 et seq.

Credit ratings of RTD's portfolio, as of December 31, 2019 and 2018, are exhibited in the table below. Portfolio holdings adhere to RTD's investment policy and applicable statute. Investments rated AAA, AA and A are from the Standard & Poor's rating service. Investments rated A-1 + /P-1 are from the Standard & Poor's and Moody's rating services, respectively.

At December 31, 2019, the Regional Transportation District's investment credit ratings consisted of the following:

Investment Ratings	Fair Value				
AAA (Standard & Poor's)	\$ 164,394				
AA (Standard & Poor's)	 20,143				
Total:	\$ 184,537				

At December 31, 2018, the Regional Transportation District's investment credit ratings consisted of the following:

Investment Ratings	F	Fair Value				
AAA (Standard & Poor's)	\$	304,628				
AA (Standard & Poor's)		11,767				
Α		5,021				
Total:	\$	321,416				

**Concentration of Credit Risk**, it is the policy of RTD to diversify its investment portfolio. Assets held in the investment funds shall be diversified to eliminate the risk of loss resulting from over-concentration of assets in a specific maturity, a specific issue or a specific class of securities. The asset allocation in the portfolio should, however, be flexible, depending upon the outlook for the economy and the securities markets.

RTD's investment policy outlines the following maximum exposure limits for unrestricted investments. As of December 31, 2019, RTD was in compliance with these limits. As of December 31, 2018, RTD was in compliance with limitations set out in RTD's previous investment policy limitations.

Investment Type	Maximum	Maximum	Maturity	Rating
	Portfolio %	Issue %	Restrictions	Restrictions
U.S. Treasury Securities	100%	100%	5 years	N/A
U.S Agencies 1	75%	25%	5 years	AA
Municipal Bonds of a	20%	3%	5 years	Α
Colorado Issuer				
Municipal Bonds of a	20%	3%	5 years	AA
non-Colorado Issuer				
Municipal Bonds, Short	20%	3%	5 years	"A-1 or "MIG 1"
Term				
Pre-Refunded Muni Bonds	40%	5%	3 years	AA
Corporate or Bank Securities	20%	3%	3 years	AA
Commercial Paper	40%	3%	270 days	A-1/P1/F1
FDIC Insured CDs	10%	3%	1 year	AA
Bankers Acceptances	20%	3%	1 year	AA
Repurchase agreements	50%	10%	90 days	AA
Local Government Investment Pools	100%	50%	N/A	AAAm/AAAf
Money market funds	100%	50%	N/A	AAAm

<sup>1</sup> In the event that one or more nationally recognized statistical rating agency rates such Agency obligations below the highest rating category, but no lower than one of the two highest rating categories, RTD's funds may continue to be invested in Agencies if such investments satisfy the requirements of CRS 24.75.601.1 (m) which limits the maturity from the date of settlement to three years, provided that the book value limits of CRS 24.75.601.1 (m) (II) shall not apply. Rather, the diversification limit shall be set as follows: no more than 75% of the portfolio may be invested in Agencies, with any more than 25% being invested in any one Agency.

Proceeds from the issuance of RTD's obligations are invested in accordance with legal documentation governing the transaction, notwithstanding any provisions of RTD's investment policy to the contrary, and do not fall within the maximum exposure limits listed above.

At December 31, 2019 and 2018, RTD had \$238,604 and \$307,779 of cash and investments that were restricted under the provisions of bond agreements.

### Fair Value Measurements

In March 2015, the Governmental Accounting Standards Board (GASB) released Statement No. 72, *Fair Value Measurement and Application*, which would generally require state and local governments to measure investments at fair value. GASB's goal is enhance comparability of governmental financial statements by requiring fair value measurement for certain assets and liabilities using a consistent definition and accepted valuation techniques. This standard expands fair value disclosures to provide comprehensive information for financial statement users about the impact of fair value measurements on a government's financial position.

Level 1 · Unadjusted quoted prices in an active market for identical assets or liabilities that the District has the ability to access at the measurement date. Examples derived from NYSE, NASDAQ, Chicage Board of Trade, Pink Sheets.

Level 2 - Inputs other than quoted prices under Level 1 that are observable for the asset or liability, either directly or indirectly on the measurement date. Examples include Matrix pricing, market corroborated pricing; inputs such as yield curves and indices.

Level 3 - Unobservable inputs for the asset or liability used to measure fair value that rely on the reporting entity's reasonably available information concerning the assumptions that market participants would use in pricing an asset or liability, including

assumptions about risk. Examples include investment Manager Pricing for Private Placement, Private Equities, and Hedge Funds.

Valuation Inputs Summary for the fiscal period ended December 31, 2019:

	 Valuation Inputs					
Investment in Securities at Value	Level 1	Level 2	Level 3	Total		
U.S. Treasury Securities	\$ - \$	149,007 \$	- \$	149,007		
U.S. Agency Securities		27,279		27,279		
Municipal Bonds	-	207	-	207		
Corporate bonds	 -	8,044	-	8,044		
Total	\$ - \$	184,537 \$	- \$	184,537		

Valuation Inputs Summary for the fiscal period ended December 31, 2018:

	 Valuation Inputs						
Investment in Securities at Value	Level 1	Level 2	Level 3	Total			
U.S. Treasury Securities	\$ - \$	265,859 \$	- \$	265,859			
U.S. Agency Securities		35,445	-	35,445			
Municipal Bonds		683		683			
Corporate bonds		19,429		19,429			
Total	\$ - \$	321,416 \$	- \$	321,416			

### **NOTE C · OTHER CURRENT ASSETS**

Other Current Assets consist of:				
	2019			2018
Prepaid expenses	\$	7,458	\$	6,500
Prepaid Secure Tabor Interest		-		72,521
Eagle P3 construction escrow		-		5,088
Park Creek Metro escrow		227		227
Other constuction escrow		155		155
Assets held for sale		1,655		1,655
Total Other Current Assets	\$	9,495	\$	86,146

# NOTE D - CAPITAL ASSETS

Capital asset activity as of December 31, 2019 was as follows: (In Thousands)

	Balances 12/31/2018		Additions		Deletions		Balances 12/31/2019	
Capital assets not being depreciated:								
Land	\$	741,541	\$	49,268	\$	1,170	\$	789,639
Construction in progress		1,802,235		350,221		1,163,909		988,547
Total capital assets not being depreciated		2,543,776		399,489		1,165,079		1,778,186
Capital assets being depreciated:								
Land improvements		4,181,583		913,596		5,721		5,089,458
Buildings		637,720		27,110		152		664,678
Revenue earning equipment		1,219,967		124,531		21,345		1,323,153
Shop, maintenance and other equipment		310,316		49,404		24,013		335,707
Total capital assets being depreciated		6,349,586		1,114,641		51,231		7,412,996
Less accumulated depreciation:								
Land improvements		1,133,755		217,381		3,860		1,347,276
Buildings		243,160		22,220		74		265,306
Revenue earning equipment		475,388		69,353		20,758		523,983
Shop, maintenance and other equipment		189,854		46,463		23,543		212,774
Total accumulated depreciation		2,042,157		355,417		48,235		2,349,339
Total capital assets being depreciated, net		4,307,429		759,224		2,996		5,063,657
Capital assets, net	\$	6,851,205	\$	1,158,713	\$	1,168,075	\$	6,841,843

Depreciation expense was \$355,417 and \$285,653 for years 2019 and 2018, respectively.

Capital asset activity as of December 31, 2018 was as follows: (In Thousands)

	Balances 2/31/2017	A	dditions	[	Deletions	Balances 12/31/2018		
Capital assets not being depreciated: Land	\$ 742,384	\$	34	\$	877	\$	741,541	
Construction in progress	 1,749,244		335,080		282,089		1,802,235	
Total capital assets not being depreciated	2,491,628		335,114		282,966		2,543,776	
Capital assets being depreciated:								
Land improvements	3,979,316		202,275		8	4,181,583		
Buildings	604,642		35,671		2,593		637,720	
Revenue earning equipment	1,216,116		21,991		18,140		1,219,967	
Shop, maintenance and other equipment	 289,390		22,118		1,192		310,316	
Total capital assets being depreciated	 6,089,464		282,055		21,933		6,349,586	
Less accumulated depreciation:								
Land improvements	966,442		167,317		4		1,133,755	
Buildings	227,186		17,861		1,887		243,160	
Revenue earning equipment	426,462		66,410		17,484		475,388	
Shop, maintenance and other equipment	 156,966		34,065		1,177		189,854	
Total accumulated depreciation	 1,777,056		285,653		20,552		2,042,157	
Total capital assets being depreciated, net	 4,312,408		(3,598)		1,381		4,307,429	
Capital assets, net	\$ 6,804,036	\$	331,516	\$	284,347	\$	6,851,205	

## NOTE E - LONG-TERM DEBT

Long-term debt is comprised of the following as of December 31:	 2019	 2018
Sales Tax FasTracks Revenue Refunding Bonds, Series 2007A, due serially on November 1 of 2030 through 2035, issued with a coupon of 4.50% payable semiannually on May 1 and November 1 of each year; including discount of (\$526) and (\$559) for 2019 and 2018, respectively. In 2014, The District did a partial Modification and Exchange on these Bonds, it resulted in a premium with an ending balance of \$13,109 and \$13,888 for 2019 and 2018, respectively. Furthermore, In 2017, The District did another partial Modification and Exchange on these Bonds, it resulted in a premium with an ending balance of \$16,007 and \$16,958 for 2019 and 2018, respectively.	\$ 249,070	\$ 250,767
Sales Tax Revenue Refunding Bonds, Series 2007A, due serially on November 1 of each year through 2024, issued with a 5.25% coupon, payable semiannually on May 1 and November 1 of each year; including premium of \$2,701 and \$3,260 for 2019 and 2018, respectively.	50,806	61,695
Sales Tax FasTracks Revenue Bonds, Series 2010A, due serially on November 1 of 2037 and 2038, issued with coupon of 5.0%, payable semiannually on May 1 and November 1 of each year, including premium of \$0 and \$1,771, for 2019 and 2018, respectively.		80,911
Sales Tax FasTracks Revenue Bonds Taxable (Direct Pay Build America Bonds), Series 2010B, due serially on November 1 of 2046 through 2050, issued with coupon of 5.844%, payable semiannually on May 1 and November 1 of each year.	300,000	300,000
Sales Tax FasTracks Revenue Bonds, Series 2012A, due serially on November 1 of 2023 and 2037, issued with coupon of 3.0% and 5.0%, payable semiannually on May 1 and November 1 of each year, including premium of \$50,778 and \$53,625 for 2019 and 2018, respectively.	525,713	528,560
Sales Tax Revenue Refunding Bonds, Series 2013A, due serially on November 1 of 2013 and 2021, issued with coupon of .25% and 2.207%, payable semiannually on May 1 and November 1 of each year; including premium of \$134 and \$206 for 2019 and 2018, respectively.	7,819	14,206
Sales Tax FasTracks Revenue Refunding Bonds, Series 2013A, due serially on November 1 of 2027 and 2036, issued with coupon of 4.25% and 5.0%, payable semiannually on May 1 and November 1 of each year; including premium of \$32,871 and \$34,824 for 2019 and 2018, respectively	237,691	239,644
<b>TIFIA Sales Tax FasTracks Loan</b> , due on May 1 of 2025 thru 2045, loaned with coupon of 3.14% and interest capitalized thru November 1, 2020. Payable semiannually on May 1 and November 1 of each year from 2021 thru 2045.	335,619	325,328
<b>Sales Tax FasTracks Revenue Bonds, Series 2016A</b> , due serially on November 1 of 2036 and 2046, issued with a coupon of 5.0%, payable semiannually on May 1 and November 1 of each year, including premium of \$31,466 and \$32,639 for 2019 and 2018, respectively.	226,431	227,604
<b>Sales Tax FasTracks Revenue Refunding Bonds, Series 2017A</b> , due serially on November 1 of each thru 2040, issued with a coupon between 3.625% to 5.0%, payable semiannually on May 1 and November 1 of each year, including premium of \$ 10,126 and \$10,611 for 2019 and 2018, respectively.	88,976	91,531

	 2019	 2018
Sales Tax FasTracks Revenue Refunding Bonds, Series 2017B, due serially on November 1 of 2033 thru 2036, issued with a coupon between 4.0% to 5.0%, payable semiannually on May 1 and November 1 of each year, including premium of and \$19,005 and \$20,134 for 2019 and 2018, respectively.	\$ 138,470	\$ 139,599
Sales Tax FasTracks Revenue Refunding Bonds, Series 2019A, due serially on November 1 of 2035 thru 2038, issued with a 3.258% coupon, payable semiannually on May 1 and November 1 of each year.	\$ 82,740	\$
<b>Certificates of Participation Taxable Refunding Obligations, Series 2007A</b> , under a lease agreement for acquisition of transit buses and vehicles, payments are due semiannually on June 1 and December 1 to 2021, issued with a 5.535% coupon.	3,295	4,815
<b>Certificates of Participation Obligations, Series 2010A</b> , under a lease purchase agreement for acquisition of light rail vehicles, construct, install and improve certain equipment and other capital projects. Payments are due semiannually on June 1 and December 1 to 2031, issued with coupons between 5.00% and 5.50%, including premium of \$634 and \$749 for 2019 and 2018, respectively.	93,444	101,679
<b>Certificates of Participation Taxable (Direct Pay Build America Bonds), Obligations,</b> <b>Series 2010B</b> , under a lease purchase agreement for acquisition of light rail vehicles, construct, install and improve certain equipment and other capital projects. Payments are due semiannually on June 1 and December 1 through 2040, issued with a coupon of 7.672%.	100,000	100,000
<b>Certificates of Participation Obligations, Series 2013A</b> , as Lessee Under an Annually Renewable Lease Purchase Agreement. Payments are due semiannually on June 1 and December 1 to 2027, issued with coupons between 2.00% and 5.00%, including premium of \$19 and \$22,074 for 2019 and 2018, respectively.	162,157	180,779
<b>Certificates of Participation Obligations, Series 2014A</b> , as Lessee Under an Annually Renewable Lease Purchase Agreement. Payments are due semiannually on June 1 and December 1 to 2044, issued with coupons between 4.125% and 5.00%, including premium of \$20,745 and \$22,595 for 2019 and 2018, respectively.	461,660	462,510
<b>Certificates of Participation Obligations, Series 2015A</b> , as Lessee Under an Annually Renewable Lease Purchase Agreement. Payments are due semiannually on June 1 and December 1 to 2040, issued with coupons between 3.25% and 5.00%, including premium of \$9,831 and \$10,307 for 2019 and 2018, respectively.	128,036	139,222
<b>JPMorgan Chase Bank, N.A., Purchase and Assignment (2016) Agreement</b> , Refunding Project of the 2002A COP's, as Lessee Under an Annually Renewable Lease Purchase Agreement. Payments are due semiannually on June 1 and December 1 to 2022, issued with a coupon of 1.903%.	38,242	50,513
<b>JPMorgan Chase Bank, N.A., Purchase and Assignment (2017) Agreement</b> , Partial Refunding Projects of the 2010A COP's and 2015A COP's, as Lessee Under an Annually Renewable Lease Purchase Agreement. Payments are due semiannually on June 1 and December 1 to 2025, issued with a coupon of 2.437%.	 153,140	 153,140
Total	 3,383,309	 3,452,503
Less current portion	 (78,128)	 (67,335)
Total Long-Term Debt	\$ 3,305,181	\$ 3,385,168

The Sales Tax Revenue Bonds and the TIFIA loan are payable from and secured by RTD's sales and use tax revenue. RTD is required to maintain certain minimum deposits, as defined in the Indenture of Trust, to meet debt service requirements. Sales Tax Revenue Bonds debt service requirements to maturity are as follows:

		-	IFIA talized			
Year ending December 31,	 Principal	Interest			Interest	Total
2020	\$ 19,475	\$	-	\$	83,292	\$ 102,767
2021	14,795		-		93,574	108,369
2022	10,675		-		92,838	103,513
2023	30,975		-		92,284	123,259
2024	32,550		-		90,719	123,269
2025-2029	346,889		4,416		417,917	769,222
2030-2034	445,306		4,417		319,444	769,167
2035-2039	457,310		-		210,317	667,627
2040-2044	321,351		-		138,255	459,606
2045-2049	321,148		-		76,567	397,715
2050-2050	 67,190		-		3,927	71,117
	\$ 2,067,664	\$	8,833	\$	1,619,134	\$ 3,695,631

Certificates of Participation are issued by Asset Acquisition Authority, Inc., a nonprofit corporation. The Authority issued Certificates of Participation (Certificates) with the proceeds being used to acquire certain equipment and facilities to be used by RTD as well as for construction of the North Metro commuter rail line. RTD leases the equipment acquired and elements constructed with the proceeds from the Certificates under separate Master Lease Purchase Agreements. In 2016, RTD refund Series 2002A Certificates with a capital lease agreement with JP Morgan Chase Bank N.A. In 2017, RTD refund portions of previously outstanding Series 2010A and Series 2015A with a Capital Lease Agreement with JP Morgan Chase Bank N.A. For financial reporting purposes, RTD accounts for the Certificates and the Capital Lease Agreements as its own obligations.

Annual repayment requirements on the Certificates and Capital Lease Agreements to maturity are as follows:

Year ending December 31,	Principal			Interest	Total		
2020	\$	58,653	\$	49,711	\$	108,364	
2021		63,756		47,489		111,245	
2022		61,993		45,520		107,513	
2023		63,515		43,371		106,886	
2024		65,920		40,946		106,866	
2025-2029		235,100		167,546		402,646	
2030-2034		187,390		119,057		306,447	
2035-2039		192,455		64,492		256,947	
2040-2044		160,530		18,449		178,979	
	\$	1,089,312	\$	596,581	\$	1,685,893	

#### **Changes in Long-Term Liabilities**

Long-term liability activity for the year ended December 31, 2019, was as follows:

	Balance					Balance	Du	e Within
	 12/31/2018	ŀ	dditions	Reductions	1	12/31/2019	0	ne Year
Sales Tax Revenue Bonds	\$ 2,072,489	\$	93,030	\$ 97,855	\$	2,067,664	\$	19,475
Certificates of Participation	1,137,932		-	48,620		1,089,312		58,653
Issuance premiums and discounts	 242,082			15,749		226,333		-
Total Bonds-COPs Payable	3,452,503		93,030	162,224		3,383,309		78,128
Net Pension Liability	268,278		50,899	-		319,177		-
Other liabilities*	 429,981		164,156	-		594,137		-
Total long-term liabilities	\$ 4,150,762	\$	308,085	\$ 162,224	\$	4,296,623	\$	78,128

\*Other liabilities consist of Eagle P3 finance charge liability, 2007 Sales Tax arbitrage call modification liability and the CCD Aciation Intergovernmental Agreement (IGA).

Long-term liability activity for the year ended December 31, 2018, was as follows:

	Balance			Balance	Dι	ıe Within
	 12/31/2017	Additions	Reductions	12/31/2018	0	ne Year
Sales Tax Revenue Bonds	\$ 2,088,744	\$ 9,980	\$ 26,235	\$ 2,072,489	\$	18,715
Certificates of Participation	1,176,397	-	38,465	1,137,932		48,620
Issuance premiums and discounts	 256,150	-	14,068	242,082		-
Total Bonds-COPs Payable	3,521,291	9,980	78,768	3,452,503		67,335
Net Pension Liability	384,208	-	115,930	268,278		-
Other liabilities *	 412,871	17,110	-	429,981		-
Total long-term liabilities	\$ 4,318,370	\$ 27,090	\$ 194,698	\$ 4,150,762	\$	67,335

\*Other liabilities consist of Eagle P3 finance charge liability and the CCD Aviation Intergovernmental Agreement (IGA).

In prior years, RTD defeased certain obligations by placing the proceeds of new obligations in an irrevocable trust to provide for all future service payments on the old obligations. Accordingly, the trust account assets and the liability for the defeased obligations are not included in these financial statements. Outstanding as of December 31, 2019 are the following amounts, which are considered defeased:

#### 2019A RTD FasTracks Escrow \$81,587

2010A COP's and 2015A COP's Escrow – Light Rail Vehicles and Maintenance Facility \$145,798

In December 2019, RTD issued its Sales Tax Revenue Bonds (FasTracks Project), Series 2019A in the par amount of \$82,740 for refunding its previously outstanding Series 2010A bonds for interest expense savings. The transaction achieved a 19.9% net present value savings and \$20,142 of gross cash flow savings between 2020 and 2038 while retaining the same final maturity of 2038.

## NOTE F - EMPLOYEE RETIREMENT AND UNEARNED COMPENSATION PLANS

### **Employee Retirement Plans**

RTD maintains two single-employer defined benefit pension plans and one defined contribution plan for substantially all fulltime employees:

- ATU 1001 Pension Plan Defined Benefit •
- Salaried Pension Plan Defined Benefit •
- Salaried Pension Plan Defined Contribution •

Plans are administered by a pension trust that issues audited financial statements, which include financial information for that plan. Those financial statements may be obtained from the plan administrators:

**Regional Transportation District** Salaried Employees Pension Trust 7000 North Broadway, Building 106 Denver, Colorado 80221

**RTD ATU 1001 Pension Plan** 2821 S. Parker Road, Suite 215 Aurora, Colorado 80014-2602

A summary of pension related items as of December 31, 2019, is presented below:

			D	eferred					
	Ne	et Pension	Οι	utflow of	Defe	erred Inflows	Pension		
Plan		Liability	Re	sources*	of	Resources	E	xpense	
ATU 1001 Pension Plan - D	\$	268,271	\$	47,127	\$	50,775	\$	(31,516)	
Salaried Pension Plan - DB		50,906		26,211		7,546		19,754	
Salaried Pension Plan - DC		<u> </u>		-		-		4,818	
Total	\$	319,177	\$	73,338	\$	58,321	\$	(6,944)	

\*ATU 1001 Pension plan deferred outflow related to contributions subsequent to measurement date was \$20,664. Salaried Pension Plan deferred outflow related to contributions subsequent to measurement date was \$5,100.

A summary of pension related items as of December 31, 2018, is presented below:

			D	Deferred				
	Ne	et Pension	0ι	utflow of	Defe	rred Inflows	Pension	
Plan		Liability	Re	sources*	of	Resources	Expense	
ATU 1001 Pension Plan - D	\$	241,090	\$	32,365	\$	94,709	\$	(7,068)
Salaried Pension Plan - DB		27,188		11,827		8,799		11,575
Salaried Pension Plan - DC		-		-		-		4,246
Total	\$	268,278	\$	44,192	\$	103,508	\$	8,753

\*ATU 1001 Pension plan deferred outflow related to contributions subsequent to measurement date was \$19,754

## ATU 1001 Pension Plan – Defined Benefit (2019)

#### Plan Description

The Regional Transportation District and Amalgamated Transit Union Local 1001 Pension Plan was established pursuant to collective bargaining agreements between RTD and the Union. This plan covers substantially all full-time union-represented employees in accordance with the union agreement. The plan is a single-employer defined benefit pension plan administered by Compusys, Inc.

## **Benefits Provided**

All benefits are paid in the form of a 50% joint and survivor annuity unless this form is rejected by the participant and the spouse.

Normal retirement benefits under the Plan are paid to participants who have attained age 65 and have been with the Plan for ten years. The benefit amount is based on final average earnings, years of employment under this Plan and age at date of retirement.

Early retirement, effective January 1, 1992, any Participant who has accumulated 20 or more years of credited service and terminated employment prior to attaining age 50, will be entitled to an early retirement benefit starting on the first day of any month after he has attained age 50. The Plan was amended effective January 1, 2011. The years of credited service needed to qualify for a normal retirement benefit was increased from five to ten years and the benefit multiplier for both the normal and early retirement was revised.

Death benefits state if an employee, who is not eligible for a vested benefit or not eligible to retire, should die, his beneficiary will be paid the accumulated employee contributions plus interest. Upon the death of a pensioner, a funeral benefit of \$2,000 will be paid in a lump sum to the pensioners designated beneficiary.

Disability benefits, an individual who becomes totally disabled prior to age 65 and retires from active employment with RTD as a direct result of being totally disabled is entitled to a disability retirement benefit provided he or she has worked for at least ten years for RTD in covered employment or any of its predecessors. An individual will be considered totally disabled upon receipt of a disability award from Social Security. Effective January 1, 2011 the years of credited service needed to qualify for a disability benefit was increased from five to ten years and the benefit multiplier was revised.

Deferred Vested Retirement Benefit, an individual who terminated employment on or after January 1, 1993, for any reason other than retirement, will be entitled to a deferred vested benefit at age 65 provided he or she had worked for at least ten years in covered employment for RTD or any of its predecessors. A participant is entitled to deferred, vested benefits as early as age 50 if he or she has worked for at least 20 years in covered employment and terminates active employment on or after attaining age 50. If an individual with 20 or more years of service terminated employment prior to age 50, benefits will be payable at any time after age 50. Effective January 1, 2011 the years of credited service needed to qualify for a deferred vested retirement disability benefit was increased from five to ten years and the benefit multiplier was revised.

Benefit structure for participants hired on or after January 1, 2011. The following changes are included:

- The benefit multiplier is changed from 2.5% to 1% with a new benefit schedule. (Priority 1).
- Regular retirement is changed from age 55 with 20 years of service to age 60 with 20 years of service.
- Sick and vacation payouts are no longer included in the pension benefit calculation. (Priority 2).
- Vesting is changed from 5 years to 10 years.
- Interest on employee contributions is changed from 5% to 3%.
- The maximum service included in the benefit calculation is reduced from 30 years to 25 years. (Priority 3).

A "Trigger Policy" has also been provided that will partially rescind the modified benefit structure when certain Plan funding benchmarks are achieved. If the total Actuarial Required Contribution (ARC) is less than 11% of payroll, pension benefits would be restored in the order of priority listed above. The "Trigger" remains in effect until such time as the 11% ARC is restored.

Employees covered by the benefit terms for the Fiscal Year Ending December 31, 2019 (December 31, 2018 measurement date), pension plan membership consisted of the following<sup>1</sup>:

Active Plan Members	1,644
Inactive Plan Members or Beneficiaries Currently Receiving Benefits	1,682
Inactive employee entitled to but not yet receiving benefits	1,712
Total	5,038

<sup>1</sup>Based on December 31, 2015 actuarial valuation demographic information

#### Net Pension Liability

The components of the net pension liability of the plan for Fiscal Year Ending December 31, 2019 as follows:

Total Pension Liability	\$ 478,082
Plan Fiduciary Net Position	209,811
Plan's Net Pension Liability	\$ 268,271
Plan Fiduciary Net Position as of Percentage of the Total Pension Liability	43.89%

#### Actuarial Methods and Assumptions Used to Calculate Net Pension Liability:

, Valuation Date:	January 1, 2019
Notes	Actuarially determined contribution rates are calculated as of December 31st each year.
	Actual contributions are made pursuant to a collective bargaining agreement.
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level Percentage of Payroll
Remaining Amortization Period	30 years
Asset Valuation Method	5-Year smoothed market
Inflation	3.00%
Salary Increases	7.00% During first 5 years of service, 3.00% after five years of service
Investment Rate of Return	7.00%
Retirement Age	Experience-based table of rates that is specific to the type of eligibility condition. Last updated for the 2015 valuation pursuant to an experience study of the period 2012-2014.
Healthy Mortality	RP-2014 Combined Mortality Table, generational projected with MP-2017.
Disabled Mortality	RP-2014 Combined Mortality Table, generational projected with MP-2017.
Other Information:	There were no benefit changes during the year.

### **Single Discount Rate**

Projected benefit payments are required to be discounted to their actuarial present values using a Single Discount Rate that reflects (1) a long-term expected rate of return on pension plan investments (to the extent that the plan's fiduciary net position is projected to be sufficient to pay benefits) and (2) tax-exempt municipal bond rate based on an index of 20-year general obligation bonds with an average AA credit rating as of the measurement date (to the extent that the plan's projected fiduciary net position is not sufficient to pay benefits).

For the purpose of this valuation, the expected rate of return on pension plan investments is 7.00%; the municipal bond rate is 3.71% (based on the daily rate closest to but not later than the measurement date of the Fidelity "20-Year Municipal GO AA Index"); and the resulting Single Discount Rate is 7.00%.

## **Development of the Single Discount Rate**

Single Discount Rate 7.00 % Long-Term Expected Rate of Investment Return 7.00 % Long-Term Municipal Bond Rate 3.71 %

	30 Year Long-Term Expected Real	d Real		
Asset Class	Rate of Return	Target Asset Allocation		
Domestic Equity	4%	30%		
International Equity	6%	25%		
Real Estate	3%	5%		
Domestic Fixed Income	1%	10%		
International Fixed Income	0%	10%		
Commodities	3%	5%		
Private Equity	10%	15%		
	Inflation Assumption	2%		
	Actuarial Return Assumption	7%		

#### **Changes in the Net Pension Liability**

(in thousands)	Increase (Decrease)				
	Total Pension	Plan Fiduciary Net	Net Pension		
	Liability	Position	Liability		
	(a)	(b)	(a) - (b)		
Balances at 12/31/2018	\$ 463,756	\$ 222,666	\$ 241,090		
Changes for the year:					
Service Cost	9,045	-	9,045		
Interest	32,102		32,102		
Differences between expected and actual experience	1,596		1,596		
Assumption Changes	-		-		
Contributions-employer		20,163	(20,163)		
Contributions-employee	-	4,627	(4,627)		
Net investment income	-	(8,837)	8,837		
Benefit payments, including refunds of employee contributions	(28,417)	(28,417)	-		
Administrative expense	-	(391)	391		
Other changes					
Net Changes	14,326	(12,855)	27,181		
Balances at 12/31/2019	\$ 478,082	\$ 209,811	\$ 268,271		

## Sensitivity of the Net Pension Liability to the Single Discount Rate Assumption

Regarding the sensitivity of the net pension liability to changes in the Single Discount Rate, the following presents the plans' net pension liability, calculated using a Single Discount Rate of 7.00%, as well as what the Plan's net pension liability would be if it were calculated using a Single Discount Rate that is one percentage-point lower or one -percentage-point higher:

	1% Decrease Current Discount		1% Increase
	(6.00%)	Rate (7.00%)	(8.00%)
Plan's Net Pension Liability	\$ 316,421	\$ 268,271	\$ 225,516

### Contribution

Contributions to the Union Plan are made in accordance with the collective bargaining agreement. This agreement requires RTD to contribute 13% plus \$6,200 for years 2018 through 2020 and the employee to contribute 5% of the employee's qualifying wages. RTD has included the full amount of the actuarially determined net pension liability for the represented pension plan, in accordance with financial reporting requirements. RTD is current in making all required contributions under the collective bargaining agreement.

## Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources

For the year ended 2019 the employer recognized pension expense of \$(10,443). The employer reported deferred outflows and inflows of resources related from pensions from the following resources:

	_	Dutflows of ources	Deferred Inflows of Resources		
Differences in experience	\$	2,965		\$.	
Differences in assumptions		-		41,732	
Excess(deficit) Investment Returns		23,498		9,043	
Contributions Subsequent to Measurement Date		20,664		-	
	\$	47,127	\$	50,775	

\$20,664 reported as deferred outflows of resources related to pensions resulting from the employer contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2019. Other amounts reported as deferred outflow of resources and deferred inflows of resources related to pensions will be recognized in pension expense a follows:

\$ (25,678)
(5,414)
1,923
4,857
\$ (24,312)

## ATU 1001 Pension Plan – Defined Benefit (2018)

### Plan Description

The Regional Transportation District and Amalgamated Transit Union Local 1001 Pension Plan was established pursuant to collective bargaining agreements between RTD and the Union. This plan covers substantially all full-time union-represented employees in accordance with the union agreement. The plan is a single-employer defined benefit pension plan administered by Compusys, Inc.

## Benefits Provided

All benefits are paid in the form of a 50% joint and survivor annuity unless this form is rejected by the participant and the spouse.

Normal retirement benefits under the Plan are paid to participants who have attained age 65 and have been with the Plan for ten years. The benefit amount is based on final average earnings, years of employment under this Plan and age at date of retirement.

Early retirement, effective January 1, 1992, any Participant who has accumulated 20 or more years of credited service and terminated employment prior to attaining age 50, will be entitled to an early retirement benefit starting on the first day of any month after he has attained age 50. The Plan was amended effective January 1, 2011. The years of credited service needed to qualify for a normal retirement benefit was increased from five to ten years and the benefit multiplier for both the normal and early retirement was revised.

Death benefits state if an employee, who is not eligible for a vested benefit or not eligible to retire, should die, his beneficiary will be paid the accumulated employee contributions plus interest. Upon the death of a pensioner, a funeral benefit of \$2,000 will be paid in a lump sum to the pensioners designated beneficiary.

Disability benefits, an individual who becomes totally disabled prior to age 65 and retires from active employment with RTD as a direct result of being totally disabled is entitled to a disability retirement benefit provided he or she has worked for at least ten years for RTD in covered employment or any of its predecessors. An individual will be considered totally disabled upon receipt of a disability award from Social Security. Effective January 1, 2011 the years of credited service needed to qualify for a disability benefit was increased from five to ten years and the benefit multiplier was revised.

Deferred Vested Retirement Benefit, an individual who terminated employment on or after January 1, 1993, for any reason other than retirement, will be entitled to a deferred vested benefit at age 65 provided he or she had worked for at least ten years in covered employment for RTD or any of its predecessors. A participant is entitled to deferred, vested benefits as early as age 50 if he or she has worked for at least 20 years in covered employment and terminates active employment on or after attaining age 50. If an individual with 20 or more years of service terminated employment prior to age 50, benefits will be payable at any time after age 50. Effective January 1, 2011 the years of credited service needed to qualify for a deferred vested retirement disability benefit was increased from five to ten years and the benefit multiplier was revised.

Benefit structure for participants hired on or after January 1, 2011. The following changes are included:

- The benefit multiplier is changed from 2.5% to 1% with a new benefit schedule. (Priority 1).
- Regular retirement is changed from age 55 with 20 years of service to age 60 with 20 years of service.
- Sick and vacation payouts are no longer included in the pension benefit calculation. (Priority 2).
- Vesting is changed from 5 years to 10 years.
- Interest on employee contributions is changed from 5% to 3%.

• The maximum service included in the benefit calculation is reduced from 30 years to 25 years. (Priority 3).

A "Trigger Policy" has also been provided that will partially rescind the modified benefit structure when certain Plan funding benchmarks are achieved. If the total Actuarial Required Contribution (ARC) is less than 11% of payroll, pension benefits would be restored in the order of priority listed above. The "Trigger" remains in effect until such time as the 11% ARC is restored.

Employees covered by the benefit terms for the Fiscal Year Ending December 31, 2018 (December 31, 2017 measurement date), pension plan membership consisted of the following<sup>1</sup>:

Active Plan Members	1,858
Inactive Plan Members or Beneficiaries Currently Receiving Benefits	1,592
Inactive employee entitled to but not yet receiving benefits	1,426
Total	4,876

<sup>1</sup>Based on December 31, 2015 actuarial valuation demographic information

### Net Pension Liability

The components of the net pension liability of the plan for Fiscal Year Ending December 31, 2018 as follows:

Total Pension Liability	\$ 463,756
Plan Fiduciary Net Position	222,666
Plan's Net Pension Liability	\$ 241,090
Plan Fiduciary Net Position as of Percentage of the Total Pension Liability	48.01%

Actuarial Methods and Assumptions Us	sed to Calculate Net Pension Liability:
--------------------------------------	-----------------------------------------

Valuation Date:	January 1, 2018
Notes	Actuarially determined contribution rates are calculated as of December 31st each year.
	Actual contributions are made pursuant to a collective bargaining agreement.
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level Percentage of Payroll
Remaining Amortization Period	30 years
Asset Valuation Method	5-Year smoothed market
Inflation	3.00%
Salary Increases	7.00% During first 5 years of service, 3.00% after five years of service
Investment Rate of Return	7.00%
Retirement Age	Experience-based table of rates that is specific to the type of eligibility condition. Last updated for the 2015 valuation pursuant to an experience study of the period 2012-2014.
Healthy Mortality	RP-2014 Combined Mortality Table, generational projected with MP-2017.
Disabled Mortality	RP-2014 Combined Mortality Table, generational projected with MP-2017.
Other Information:	There were no benefit changes during the year.

### **Single Discount Rate**

Projected benefit payments are required to be discounted to their actuarial present values using a Single Discount Rate that reflects (1) a long-term expected rate of return on pension plan investments (to the extent that the plan's fiduciary net position is projected to be sufficient to pay benefits) and (2) tax-exempt municipal bond rate based on an index of 20-year general obligation bonds with an average AA credit rating as of the measurement date (to the extent that the plan's projected fiduciary net position is not sufficient to pay benefits).

For the purpose of this valuation, the expected rate of return on pension plan investments is 7.00%; the municipal bond rate is 3.31% (based on the daily rate closest to but not later than the measurement date of the Fidelity "20-Year Municipal GO AA Index"); and the resulting Single Discount Rate is 7.00%.

## **Development of the Single Discount Rate**

Single Discount Rate 7.00 % Long-Term Expected Rate of Investment Return 7.00 % Long-Term Municipal Bond Rate 3.31 %

	30 Year Long-Term Expected Real	
Asset Class	Rate of Return	Target Asset Allocation
Domestic Equity	4%	30%
International Equity	6%	25%
Real Estate	6%	5%
Domestic Fixed Income	1%	10%
International Fixed Income	1%	10%
Commodities	5%	5%
Private Equity	8%	15%
	Inflation Assumption	2%
	Actuarial Return Assumption	7%

## **Changes in the Net Pension Liability**

(in thousands) Increase (Decrease)						
	To	tal Pension	Plan	Fiduciary Net	Ne	t Pension
	Liability		Position		Liability	
		(a)		(b)		(a) - (b)
Balances at 12/31/2017	\$	552,781	\$	203,770	\$	349,011
Changes for the year:						
Service Cost		14,387		-		14,387
Interest		27,099		-		27,099
Differences between expected and actual experience		4,855		-		4,855
Assumption Changes		(108,133)		-		(108,133)
Contributions-employer		-		13,168		(13,168)
Contributions-employee		-		4,389		(4,389)
Net investment income				28,983		(28,983)
Benefit payments, including refunds of employee contributions		(27,233)		(27,233)		
Administrative expense		-		(411)		411
Other changes		-		-		-
Net Changes		(89,025)		18,896		(107,921)
Balances at 12/31/2018	\$	463,756	\$	222,666	\$	241,090

## Sensitivity of the Net Pension Liability to the Single Discount Rate Assumption

Regarding the sensitivity of the net pension liability to changes in the Single Discount Rate, the following presents the plans' net pension liability, calculated using a Single Discount Rate of 7.00%, as well as what the Plan's net pension liability would be if it were calculated using a Single Discount Rate that is one percentage-point lower or one -percentage-point higher:

	1% Decrease	Current Discount	1% Increase
	(6.00%)	Rate (7.00%)	(8.00%)
Plan's Net Pension Liability	\$ 289,393	\$ 241,090	\$ 199,993

## Contribution

Contributions to the Union Plan are made in accordance with the collective bargaining agreement. This agreement requires RTD to contribute 13% plus \$6,200 for years 2018 through 2020 and the employee to contribute 5% of the employee's qualifying wages. RTD has included the full amount of the actuarially determined net pension liability for the represented pension plan, in accordance with financial reporting requirements. RTD is current in making all required contributions under the collective bargaining agreement.

## Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources

For the year ended 2018 the employer recognized pension expense of \$(7,068). The employer reported deferred outflows and inflows of resources related from pensions from the following resources:

	Deferred Outflows of Deferred Inflov Resources Resources			
Differences in experience	\$	3,364	\$	1,198
Differences in assumptions*		937		81,454
Excess(deficit) Investment Returns		8,310		12,057
Contributions Subsequent to Measurement Date		19,754		
	\$	32,365	\$	94,709

\$19,754 reported as deferred outflows of resources related to pensions resulting from the employer contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2019. Other amounts reported as deferred outflow of resources and deferred inflows of resources related to pensions will be recognized in pension expense a follows:

Year Ended	
December 31,	
2019	\$ (37,268)
2020	(31,041)
2021	(10,776)
2022	(3,013)
2023	-
Total	\$ (82,098)

## Salaried Pension Plan - Defined Benefit (2019)

### Plan Description

The Regional Transportation District Salaried Employees' Pension Plan provides coverage for all full-time salaried employees whom were hired prior to January 1, 2008. The plan is a single-employer defined benefit pension plan administered by Fringe Benefit Services, Inc.

### **Benefits Provided**

Normal retirement eligibility age is 65 with five years of credited service; monthly benefit 2.5% of average final compensation times credited service. Early retirement age is 55 with five years of credited service; monthly benefit if retire or terminate from active status on or after age 55, the normal retirement benefit is reduced 1/30 for each year less than age 60. If the employee terminates from active status prior to age 55, the normal retirement benefit is reduced 1/15 for each year between ages 60 and 65, and 1/30 for each year less than age 60.

Disability retirement is five years of credited service, totally and permanently disabled, and entitled to a Social Security disability award; monthly benefit unreduced normal retirement benefit, payable upon approval for Social Security disability. Pre-retirement death eligibility is five years of credited service; monthly benefit survivor pension assuming the participant retired the day before death with a 50% Joint and Survivor Benefit. If death occurs before age 55, payment is deferred until the participant would have reached age 55 and is reduced for early commencement. Survivors of married participants may elect to receive an annuity or a lump sum distribution. Survivors of unmarried participants will receive a lump sum distribution if death occurs while the participant is actively employed with RTD. The lump sum is the present value of the survivor's pension above but determined as if the participant was married and the spouse was the same age as the participant.

Termination eligibility is five years of credited service; monthly benefit if not eligible to retire normal retirement benefit, early retirement benefit, or if elected within six months, a lump sum equal to the present value of the age 65 accrued benefits, payable in lieu of all other benefits in the Plan. Employee monthly benefit if eligible to retire normal retirement benefit, early retirement benefit, or a lump sum equal to the present value of an immediate accrued benefit, payable in lieu of all other benefits in the Plan.

Forms of annuity payments for normal form are 50% Joint and Survivor Annuity if married, Single Life Annuity otherwise. Optional Forms are 25%, 50%, 66-2/3% or 100% Joint and Survivor Annuity with 5-year or 10-year Certain and Life Annuity (60 or 120 months guaranteed) Social Security Adjustment (Age 62 or Age 65) Lump Sum.

Credited service is one year for each calendar year of 1,000 hours of service (except years and completed months in the year of transfer). Credited service applies to vesting and service for retirement benefit eligibility. Average final compensation is average of participant's highest consecutive 36 months of compensation in the last 120 months of credited service immediately preceding the calendar month in which retirement occurs. Compensation excludes bonuses, severance pay, long-term disability pay and other extra compensation paid in the Fiscal Year. Compensation includes deferrals made to the RTD Deferred Compensation Plan and RTD Flexible Spending Account Plan, overtime, shift differentials, leave pay and salary reductions.

Employees covered by the benefit terms for the Fiscal Year Ending December 31, 2019 (December 31, 2018 measurement date), pension plan membership consisted of the following<sup>1</sup>:

Active Plan Members	267
Inactive Plan Members or Beneficiaries Currently Receiving Benefits Inactive Plan Members Entitled to But Not Yet Receiving	276
Benefits <sup>2</sup>	115
Total	658
<sup>1</sup> Based on January 1, 2018 actuarial valuation demographic information <sup>2</sup> Includes transfer outs	

#### Net Pension Liability

The components of the net pension liability of the plan for Fiscal Year Ending December 31, 2019 as follows:

Total Pension Liability	\$ 180,572
Plan Fiduciary Net Position	129,666
Plan's Net Pension Liability	\$ 50,906
Plan Fiduciary Net Position as of Percentage of the Total	
Pension Liability	71.81%

#### Actuarial Assumptions

The total pension liability was determined by an actuarial valuation with date of January 1, 2019, using the following actuarial assumptions applied to all periods included in the measurement with a liability roll forward to December 31, 2018 for disclosure purposes for the Fiscal Year Ending December 31, 2019:

Inflation	2.75%
Salary Increases	3.70% - 6.45%, based on age
Investment Rate of Return	7.00%, net of investment expenses

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best- estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage including expected inflation.

Best estimates of arithmetic real rates of return for each major asset class included in the pension plan's target asset allocation as of the December 31, 2018 (for disclosure purposes for the Fiscal Year Ending December 31, 2019) are summarized in the following data and reflect assumed long-term expected real rate of return over a 30-year horizon upon which the disclosure is based:

	Long-Term Expected Real Rat	te
Asset Class	of Return	Target Asset Allocation
Domestic Equity	7.6%	35%
International Equity	7.8%	25%
Fixed Income	3.3%	20%
Real Estate	7.2%	15%
Cash	2.2%	5%

## Mortality Rates for Annuities (60% Election Assumption)

Healthy: RP-2014 Blue Collar Mortality Tables for healthy employees and annuitants. Disabled: RP-2014 Disabled Retiree Mortality Tables.

## Mortality Rates for Lump Sums (40% Election Assumption)

RP-2014 Blue Collar Mortality Tables for healthy annuitants, blended 70% male / 30% female for participants and 30% male / 70% female for beneficiaries.

The actuarial assumptions used in the January 1, 2017 evaluation were based on the results of an actuarial experience study covering the period January 1, 2009 – December 31, 2013.

## Single Discount Rate

The discount rate used to measure the total pension liability was 7.50%. The projection of cash flows used to determine the discount rate assumed that RTD contributions would be equal to the actuarially determined contribution rate for the applicable fiscal years. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability. The discount rate does not incorporate nor require a 20-year tax-exempt general obligation municipal bond rate (with an average rating of AA/As or higher).

## Sensitivity of the Net Pension Liability to Changes in the Discount Rate

The following present the net pension liability of the Plan, calculated using the discount rate of 7.00%, as well as what the Plan's net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.00%) or 1-percentage-point higher (8.00%) than the current rate:

	1% Decrease	Current Discount	1% Increase
	(6.00%)	Rate (7.00%)	(8.00%)
Plan's Net Pension Liability/Assets	\$ 68,742	\$ 50,906	\$ 35,522

#### **Changes in the Net Pension Liability**

(in thousands)	Increase (Decrease)				
	<b>Total Pension</b>	Plan Fi	duciary Net	Net	Pension
	Liability	P	osition	L	iability
	(a)		(b)	(	a) - (b)
Balances at 12/31/2018	\$ 171,550	\$	144,362	\$	27,188
Changes for the year:					
Service Cost	3,000		-		3,000
Interest	12,624				12,624
Differences between expected and actual experience	(1,981)				(1,981)
Assumption Changes	7,844		-		7,844
Contributions-employer	-		5,100		(5,100)
Net investment income	-		(7,143)		7,143
Benefit payments, including refunds of employee contributions	(12,465)		(12,465)		-
Administrative expense			(188)		188
Other changes					
Net Changes	9,022		(14,696)		23,718
Balances at 12/31/2019	\$ 180,572	\$	129,666	\$	50,906
				-	

#### Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources

For the year ended 2019 the employer recognized pension expense of \$13,181. The employer reported deferred outflows and inflows of resources related from pensions from the following resources.

	Deferred Outflows of Resources	Inflows of urces
Differences in experience	\$-	\$ 1,435
Differences in assumptions	4,938	
Excess(deficit) Investment Returns	16,173	6,111
Contributions Subsequent to Measurement Date	5,100	
Total	\$ 26,211	\$ 7,546

\$5,100 reported as deferred outflows of resources related to pensions resulting from the employer contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2019. Other amounts reported as deferred outflow of resources and deferred inflows of resources related to pensions will be recognized in pension expense a follows:

Year Ended,	
2020	\$ 5,357
2021	2,871
2022	1,800
2023	3,537
Total	\$ 13,565

## Salaried Pension Plan - Defined Benefit (2018)

### Plan Description

The Regional Transportation District Salaried Employees' Pension Plan provides coverage for all full-time salaried employees whom were hired prior to January 1, 2008. The plan is a single-employer defined benefit pension plan administered by Fringe Benefit Services, Inc.

## Benefits Provided

Normal retirement eligibility age is 65 with five years of credited service; monthly benefit 2.5% of average final compensation times credited service. Early retirement age is 55 with five years of credited service; monthly benefit if retire or terminate from active status on or after age 55, the normal retirement benefit is reduced 1/30 for each year less than age 60. If the employee terminates from active status prior to age 55, the normal retirement benefit is reduced 1/15 for each year between ages 60 and 65, and 1/30 for each year less than age 60.

Disability retirement is five years of credited service, totally and permanently disabled, and entitled to a Social Security disability award; monthly benefit unreduced normal retirement benefit, payable upon approval for Social Security disability. Pre-retirement death eligibility is five years of credited service; monthly benefit survivor pension assuming the participant retired the day before death with a 50% Joint and Survivor Benefit. If death occurs before age 55, payment is deferred until the participant would have reached age 55 and is reduced for early commencement. Survivors of married participants may elect to receive an annuity or a lump sum distribution. Survivors of unmarried participants will receive a lump sum distribution if death occurs while the participant is actively employed with RTD. The lump sum is the present value of the survivor's pension above but determined as if the participant was married and the spouse was the same age as the participant.

Termination eligibility is five years of credited service; monthly benefit if not eligible to retire normal retirement benefit, early retirement benefit, or if elected within six months, a lump sum equal to the present value of the age 65 accrued benefits, payable in lieu of all other benefits in the Plan. Employee monthly benefit if eligible to retire normal retirement benefit, early retirement benefit, or a lump sum equal to the present value of an immediate accrued benefit, payable in lieu of all other benefits in the Plan.

Forms of annuity payments for normal form are 50% Joint and Survivor Annuity if married, Single Life Annuity otherwise. Optional Forms are 25%, 50%, 66-2/3% or 100% Joint and Survivor Annuity with 5-year or 10-year Certain and Life Annuity (60 or 120 months guaranteed) Social Security Adjustment (Age 62 or Age 65) Lump Sum.

Credited service is one year for each calendar year of 1,000 hours of service (except years and completed months in the year of transfer). Credited service applies to vesting and service for retirement benefit eligibility. Average final compensation is average of participant's highest consecutive 36 months of compensation in the last 120 months of credited service immediately preceding the calendar month in which retirement occurs. Compensation excludes bonuses, severance pay, long-term disability pay and other extra compensation paid in the Fiscal Year. Compensation includes deferrals made to the RTD Deferred Compensation Plan and RTD Flexible Spending Account Plan, overtime, shift differentials, leave pay and salary reductions.

Employees covered by the benefit terms for the Fiscal Year Ending December 31, 2018 (December 31, 2017 measurement date), pension plan membership consisted of the following<sup>1</sup>:

Active Plan Members	291
Inactive Plan Members or Beneficiaries Currently Receiving Benefits Inactive Plan Members Entitled to But Not Yet Receiving	264
Benefits <sup>2</sup>	120
Total	675
<sup>1</sup> Based on January 1, 2017 actuarial valuation demographic information <sup>2</sup> Includes transfer outs	

#### Net Pension Liability

The components of the net pension liability of the plan for Fiscal Year Ending December 31, 2018 as follows:

Total Pension Liability	\$ 171,550
Plan Fiduciary Net Position	144,362
Plan's Net Pension Liability	\$ 27,188
Plan Fiduciary Net Position as of Percentage of the Total Pension Liability	84.15%

#### Actuarial Assumptions

The total pension liability was determined by an actuarial valuation with date of January 1, 2017, using the following actuarial assumptions applied to all periods included in the measurement with a liability roll forward to December 31, 2017 for disclosure purposes for the Fiscal Year Ending December 31, 2018:

Inflation	3.00%
Salary Increases	4.75% - 9.75%, based on age
Investment Rate of Return	7.50%, net of investment expenses

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best- estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage including expected inflation.

Best estimates of arithmetic real rates of return for each major asset class included in the pension plan's target asset allocation as of the December 31, 2017 (for disclosure purposes for the Fiscal Year Ending December 31, 2018) are summarized in the following data and reflect assumed long-term expected real rate of return over a 30-year horizon upon which the disclosure is based:

	Long-Term Expected Real Rat	te
Asset Class	of Return	Target Asset Allocation
Domestic Equity	7.9%	40%
International Equity	8.4%	25%
Fixed Income	4.4%	20%
Real Estate	7.5%	15%
Cash	N/A	N/A

## Mortality Rates for Annuities (60% Election Assumption)

Healthy: RP-2014 Blue Collar Mortality Tables for healthy employees and annuitants. Disabled: RP-2014 Disabled Retiree Mortality Tables.

## Mortality Rates for Lump Sums (40% Election Assumption)

RP-2014 Blue Collar Mortality Tables for healthy annuitants, blended 70% male / 30% female for participants and 30% male / 70% female for beneficiaries.

The actuarial assumptions used in the January 1, 2017 evaluation were based on the results of an actuarial experience study covering the period January 1, 2009 – December 31, 2013.

## Single Discount Rate

The discount rate used to measure the total pension liability was 7.50%. The projection of cash flows used to determine the discount rate assumed that RTD contributions would be equal to the actuarially determined contribution rate for the applicable fiscal years. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability. The discount rate does not incorporate nor require a 20-year tax-exempt general obligation municipal bond rate (with an average rating of AA/As or higher).

## Sensitivity of the Net Pension Liability to Changes in the Discount Rate

The following present the net pension liability of the Plan, calculated using the discount rate of 7.50%, as well as what the Plan's net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.50%) or 1-percentage-point higher (8.50%) than the current rate:

	1% Decrease	Current Discount	1% Increase
	(6.50%)	Rate (7.50%)	(8.50%)
Plan's Net Pension Liability/Assets	\$ 41,591	\$ 27,188	\$ 14,668

#### **Changes in the Net Pension Liability**

(in thousands)	Increase (Decrease)							
	Tot	tal Pension	Plan	Fiduciary Net	Net Pension			
		Liability		Position	Liability			
		(a)		(b)	(a) - (b)			
Balances at 12/31/2017	\$	166,153	\$	130,956	\$	35,197		
Changes for the year:								
Service Cost		3,201		-		3,201		
Interest		12,351		-		12,351		
Differences between expected and actual experience		(816)		-		(816)		
Assumption Changes		-		-		-		
Contributions-employer		-		4,600		(4,600)		
Net investment income		-		18,322		(18,322)		
Benefit payments, including refunds of employee contributions		(9,339)		(9,339)		-		
Administrative expense		-		(177)		177		
Other changes		-		-				
Net Changes		5,397		13,406		(8,009)		
Balances at 12/31/2018	\$	171,550	\$	144,362	\$	27,188		

#### Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources

For the year ended 2018 the employer recognized pension expense of \$11,575. The employer reported deferred outflows and inflows of resources related from pensions from the following resources.

	Deferred Outflows of Resources			
Differences in experience	\$	2,387	\$	502
Differences in assumptions*		266		-
Excess(deficit) Investment Returns		4,074		8,297
Contributions Subsequent to Measurement Date		5,100		
Total	\$	11,827	\$	8,799

\$5,100 reported as deferred outflows of resources related to pensions resulting from the employer contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2019. Other amounts reported as deferred outflow of resources and deferred inflows of resources related to pensions will be recognized in pension expense a follows:

Year Ended,		
2019	\$ 2	2,205
2020		(352)
2021	(2	2,187
2022	(1	,737
2023		-
Total	\$ (2	,071)

## RTD Plan – Defined Contribution

## Plan Description

The RTD defined contribution plan represents full-time salaried employees hired after January 1, 2008. The RTD Board adopted amendment No. 8, effective January 1, 2008. RTD contributes 9% of the employee's qualifying wage. Contributions totaled \$4,818 and \$4,246 in 2019 and 2018, respectively. RTD employees cannot contribute to the Plan. Membership was 709 and 624 active employees in 2019 and 2018, respectively.

## Amalgamated Transit Union Division 1001 Health and Welfare Trust

The Amalgamated Transit Union Division 1001 Health and Welfare Trust was formed pursuant to a Trust Agreement effective July 1, 1971, between Amalgamated Transit Union Division 1001 (ATU 1001) and an agent of a transit enterprise owned by the City and County of Denver, through July 3, 1974, and the Regional Transportation District (RTD) thereafter. In addition to the original Denver Metro Division, employees of other RTD divisions have been approved for participation in the Trust benefits. The Trust agreement shall continue in full force and effect in all its terms and provisions so long as there continues to be a collective bargaining agreement between the Union and RTD.

The Trust provides health benefits (hospital, medical, dental, vision, life and short-term disability) for represented employees of RTD and certain officers of ATU 1001 and health care benefits for retired employees actively working 600 hours or more per quarter. The Trust is funded through contribution by the employer and employee, the share of benefit plan contributions is set by the Collective Bargaining Agreement (CBA). RTD's contribution was \$20,890 and \$19,797 the years ended December 31, 2019 and 2018, respectively. The Trust also provides insurance coverage for felonious assault for each employee and funds the Amalgamated Transit Union Division 1001 Legal Services Trust. The Trust self-insures part of its health benefits, life insurance coverage and short-term disability. The plan issues audited financial statements, which include financial information for the plan. The financial statements may be obtained from the plan: RTD ATU 1001 Health and Welfare Trust, 2821 S. Parker Road, Suite 215 Aurora, Colorado 80014-2602.

### **Unearned Compensation Plan**

RTD offers its employees an unearned compensation plan (the Plan), created in accordance with Internal Revenue Code Section 457, which is available to substantially all employees and permits them to defer a portion of their compensation to future years. Under the terms of the Plan, the unearned compensation is available to participants upon termination, retirement, death or in the event of an unforeseeable emergency or other financial hardship.

### **Compensated Absences**

RTD considers all accrued compensated absences as due within one year. Employees accrue paid time off (PTO), vacation, and sick leave based on time in service; employees are not allowed to accumulate more than twice their annual PTO or vacation accrual and sick leave based on years of service. Employees are paid any outstanding compensated absence balances upon leaving RTD. RTD records these accrued compensated absences as current liabilities under the principle of conservatism by assuming these amounts are the most RTD would be obligated to pay in the near-term.

Compensated absences activity for the year ended December 31, 2019 was as follows:

	12	/31/2018					12	/31/2019
	Balance Accrual			ccruals	Pa	yments	E	Balance
Represented employees	\$	3,251	\$	2,558	\$	2,283	\$	3,526
Salaried employees	\$	10,248	\$	6,888	\$	6,385	\$	10,751
Total compensated absences due	\$	13,499	\$	9,446	\$	8,668	\$	14,277

Compensated absences activity for the year ended December 31, 2018 was as follows:

	12	/31/2017					12	/31/2018
	Balance		Accruals		Payments		Balance	
Represented employees	\$	2,888	\$	2,283	\$	1,920	\$	3,251
Salaried employees	\$	10,667	\$	6,385	\$	6,804	\$	10,248
Total compensated absences due	\$	13,555	\$	8,668	\$	8,724	\$	13,499

The accrued compensation liabilities of \$25,805 and \$23,868 as of December 31, 2019 and December 31, 2018 include \$11,529 and \$10,369 of accrued wages, salaries, and fringe benefits in addition to accrued compensated absences.

## NOTE G - OPERATING LEASES - LESSOR

### **Union Station Alliance (USA) Lease**

In December 2012, RTD entered a contract with Union Station Alliance (USA) to renovate and lease RTD's historic Denver Union Station Building. The renovation by USA included a hotel, Amtrak facilities, office space, retail and restaurant services as well as renovation of the Great Train Hall. The renovations were complete and open to the public in July 2014. The agreement includes a 60-year lease to USA to operate and maintain the facility in which RTD will participate in certain revenue collections.

## **NOTE H – COMMITMENTS AND CONTINGENCIES**

### Commitments

### Operating Lease – Civic Center Transfer Facility

In 1976, RTD entered into an operating lease for a portion of the land on which the Civic Center transfer facility is located in downtown Denver. As collateral for the lease, RTD must maintain an account balance with a minimum fair value of \$1,500 in an escrow account, the interest on which accrues to RTD until the lease expires. This amount in escrow is included in restricted assets in the accompanying financial statements.

Fixed rental commitments under the lease in years subsequent to December 31, 2019, are as follows:

Year ending December 31,	
2020	\$ 270
2021	273
2022	275
2023	278
2024	281
2025-2029	1,448
2030-2034	1,521
2035-2039	1,599
2040-2044	1,680
2045-2049	1,766
2050-2054	1,856
2055-2059	1,951
2060-2064	2,050
2065-2069	2,155
2070-2074	2,265
2075	467
	\$ 20,135

Rental expense relating to this lease amounted to \$267 and \$265 for the years ended December 31, 2019 and 2018, respectively.

### **Operating Lease – Purchased Transportation**

RTD has entered into a number of transactions in which certain of its light rail vehicles have been leased to and subleased back from certain U.S. and foreign companies and has entered into a transaction in which its maintenance facilities have been leased to and subleased back. As part of these transactions, RTD irrevocably set aside certain monies (which were received from each counter party as payment for its leasing of light rail vehicles and real property) with a third party trustee.

The monies held by such trustees will be utilized to make the lease payments owed by the RTD under the transactions and are therefore considered fully funded and economically defeased.

## Capital Projects

As of December 31, 2019, RTD has contracts for the construction of various capital projects and the purchase of buses and light rail vehicles. The costs to complete these projects and the purchase of buses/light rail vehicles total \$115,716 and \$254,961 in 2019 and 2018, respectively.

### Grant Match Requirements

Under the provisions of current grants, RTD is obligated to satisfy certain matching requirements of these grants. At December 31, 2019, RTD had a commitment to provide \$116,534 in matching funds in order to receive \$33,443 in future federal and state grant funds.

## Privatization Contracts

In response to the privatization legislation (Note A), RTD has awarded contracts for specific groups of routes, not to exceed 58% as required by law for vehicular services. As of January 2019, 54.1% of RTD's non-rail transit services are delivered by private contractors operating under the auspices and direction of RTD.

## ADA Paratransit Service

With the passage of the Americans with Disabilities Act of 1990 (ADA), RTD was mandated to provide paratransit service to the disabled individuals unable to use RTD's fixed route buses, operating the same days and hours of service as the fixed route service. This service, called Access-a-Ride, is a curb-to-curb (with door-to-door assistance upon special request) transportation system offered to disabled individuals who cannot functionally use RTD's regular fixed route system. Passengers eligible for Access-a-Ride service must originate their trip within 3/4 of a mile of an RTD non-commuter fixed route. Since September 1996, RTD has been in full compliance with the Americans with Disabilities Act of 1990 requirement to provide paratransit service to the disabled individuals unable to use fixed route buses.

### **Future Commitments under Construction Contracts**

In 2010, RTD entered into a public-private partnership to design, build, finance and operate several of the transit improvements contemplated under the FasTracks program, including the Commuter Rail Maintenance Facility, the East Rail Corridor, the Gold Line Rail Corridor and the electrified segment of the Northwest Rail Corridor (together, the "Eagle P3 Project). The Eagle P3 Project is being delivered and operated under a concession agreement that RTD has entered with a concessionaire that was selected through a competitive proposal process. The selected concessionaire is known as Denver Transit Partners (DTP), a special purpose company owned by Fluor Enterprises, Uberior Investments and Laing Investments.

The Eagle P3 Project construction was completed in two phases with Phase I completed in 2016 and Phase II completed in 2019. Under the terms of the Eagle P3 Project agreement, RTD made scheduled construction payments to DTP from 2011 through 2017 for completed project elements. RTD began commuter rail services on the University of Colorado A Line and the B Line in 2016 and began services on the G Line in 2019 Under the terms of the concessionaire agreement, RTD will make scheduled secured principal and interest payments to DTP from 2017 through 2044 in addition to service payments for the

provision of operations and maintenance services by DTP. The principal and interest payments are fixed amounts for the term of the agreement while the service payments are indexed each year according to certain inflation measurements. In addition, the service payments may also be adjusted for schedule changes, special services and certain availability factors.

In 2013, RTD entered a contract with Regional Rail Partners to construct the North Metro Rail Line. The North Metro Rail Line is an 18.5-mile electric commuter rail line that will run from Denver Union Station through Commerce City, Thornton and Northglenn to Highway 7 at 162<sup>nd</sup> Avenue in North Adams County. The North Metro Rail Line is expected to open within the next few years.

In 2014, RTD entered a contract with Balfour Beatty Infrastructure, Inc. to design and construct the Southeast Rail Extension Project. The Southeast Rail Extension includes 2.3 miles extending of the existing Southeast Light rail Line from Lincoln Station through the City of Lone Tree to RidgeGate Parkway Station featuring a new Park-n-Ride with a structure of 1,300 parking spaces. The Southeast Rail Extension opened in 2019.

#### **Future Commitments under Service Contracts**

The fixed commitments under the Privatization contracts (bus) in the years subsequent to December 31, 2019 are as follows:

#### Year ending December 31,

2020	\$ 153,288
2021	\$ 142,019
2022	\$ 127,262
2023	\$ 68,202
2024	\$ 55,569
Total	\$ 546,340

Denver Transit Partner's concessionaire service payment commitments under the lease in years subsequent to December 31, 2019, are as follows:

Year ending Decmeber 31,	TABOR Secured Payment		Serv	vice Availability Payment		Total
2020	\$	45.813	\$	73,635	\$	119,448
2021	•	46,264	•	56,934		103,198
2022	44.618			59,320		103,938
2023	45,790			63,055		108,845
2024		47,210		80,069		127,279
2025-2029		234,644		403,059		637,703
2030-2034		318,570		473,010		791,580
2035-2039		321,297		567,611		888,908
2040-2044		213,250		668,695		881,945
Total	\$ 1,317,456		\$	2,445,388	\$	3,762,844

The projected amounts include an estimation for certain future inflation indexes as required by the concessionaire agreement. These inflation indexes will be adjusted annually as projects are revised.

### Diesel Fuel Contract

RTD contracts with Mansfield Oil Co of Gainesville, Inc. for diesel fuel. The contract is structured as a single year contract. The estimated (no locked-in price) commitment under the Mansfield contract in 2020 is \$18,000. RTD estimates usage of 9.0 million gallons at unit cost of \$2.00 per gallon: 5.0 million gallons of RTD's usage and 4.0 million gallons of RTD private carrier's usage.

### Contingencies

### Federal Grants

RTD receives federal grants for capital projects and operating assistance, which are subject to audit by FTA. Although the outcome of any such audit cannot be predicted, it is management's opinion these audits will not result in liabilities to such an extent that they would materially affect RTD's financial position.

### Self-Insurance

RTD is self-insured for general liability and Workers' Compensation claims. Liabilities are reported when it is probable that a loss has occurred and the amount of the loss can be reasonably estimated. In addition, RTD offers a self-insured health benefit option as part of its employee benefits program in which costs are recognized as they are incurred.

RTD does not carry excess liability insurance for personal injury and property damage. Under the provisions of the Colorado Government Immunity Act, the maximum liability, with certain exceptions as defined in the Act, to RTD for claims involving personal injury and property damage is \$387 per individual and \$1,093 per incident.

For Workers' Compensation, an excess coverage insurance policy covers individual claims in excess of \$2,000. The amount of settlements has not exceeded insurance coverage in any of the past three years.

RTD's liability for unpaid claims includes an amount for claims that have been incurred but not reported (IBNR). RTD's Risk Management determines incurred claims by investigating the accident and establishing a reserve. Reserves are established on the day of assignment, reviewed at 30 days and again at 90 days. Reserves are reviewed every 90 days thereafter and based on ultimate exposure. This amount is included in other accrued expenses in the statement of net assets. Changes in the balances of claims liabilities for both general liability and Worker's Compensation during the past year are as follows:

	Workers'								
	Auto	Liability	Comp	ensation		Total			
Unpaid claims, January 1, 2018	\$	5,492	\$	7,178	\$	12,670			
Incurred claims (including IBNR)		3,535		5,367		8,902			
Claims payments		(3,044)		(4,970)		(8,014)			
Unpaid claims, December 31, 2018		5,983		7,575		13,558			
Incurred claims (including IBNR)		3,386		4,636		8,022			
Claims payments		(3,490)		(4,340)		(7,830)			
Unpaid claims, December 31, 2019*	\$	5,879	\$	7,871	\$	13,750			

\*All claim liabilities are considered current liabilities payable within one year.

### **Contract Disputes and Legal Proceedings**

RTD is party to a number of pending or threatened tort lawsuits, workers' compensation claims, or labor/employment claims under which it may be required to pay certain amounts upon final disposition of these matters. RTD also has certain contract disputes being considered in contractual dispute resolution proceedings. RTD's legal counsel estimates that the ultimate outcome of these matters is sufficiently covered by RTD's general liability or workers' compensation reserves, project contingencies, or insurance, or would not otherwise materially affect the financial statements of RTD.

The Concessionaire for the Eagle Project, Denver Transit Partners, has brought a lawsuit against RTD in Denver District Court asserting claims based on an alleged change in law. DTP has alleged damages for those claims in excess of \$120M. RTD if vigorously defending that lawsuit and believes it is likely to prevail.

# **NOTE I – NET POSITION**

	December 31,					
		2019	_	2018		
Invested in capital assets, net of related debt	\$	2,987,538	\$	3,144,175		
Restricted net position						
Restricted debt service		117,805		139,779		
Restricted TABOR		25,940		24,079		
Restricted Fastracks		369,502		361,275		
Restricted Deposits		1,503		1,504		
Total restricted net position		514,750		526,637		
Unrestricted net position						
Unrestricted - represented net pension liability*		(265,841)		(303,435)		
Unrestricted - salaried net pension liability		(32,241)		(24,160)		
Unrestricted net position		132,672		120,289		
Total unrestricted net position		(165,410)		(207,306)		
Total net position	\$	3,336,878	\$	3,463,506		

\* Note: RTD has included the full amount of the actuarially determined net pension liability for the represented pension plan, in accordance with financial reporting requirements. RTD is current in making all required contributions under the collective bargaining agreement.

## NOTE J – BUDGETARY DATA

RTD's annual budget is prepared on the same basis as that used for accounting except that the budget also includes proceeds of long-term debt and capital grants as revenue and expenditures include capital outlays and bond principal payments, and excludes TABOR rebates under Amendment One, extraordinary loss and depreciation on, as well as gains and losses on disposition of, property and equipment. The budget sets forth all proposed outlays for operations, planning, administration, development, debt service, and capital outlays for the fiscal year. Prior to October 15, the General Manager submits to the Board of Directors a proposed operating and capital budget for the fiscal year commencing the following January 1, which is made available for public inspection and comment. On or before December 31, the budget is adopted in conjunction with an appropriation resolution by the Board of Directors, who must also approve subsequent amendments thereto. In the absence of such adoption, RTD has authority to begin making expenditures limited to 90% of the prior year's approved appropriation. RTD's policy on budget transfers authorizes the General Manager to approve certain transfers within the budget.

A reconciliation for the years ended December 31 of the annual budget, as amended, to actual revenue and expenses is as follows:

	2019		 2018
Revenues and Proceeds			
Revenue, actual	\$	950,875	\$ 897,388
Proceeds from debt/arbitrage relief		(96,071)	(5,805)
Federal capital grants and local contributions		124,497	 81,002
Revenue, actual (budgetary basis)	\$	979,301	\$ 972,585
Revenue, budget	\$	952,171	\$ 1,208,273
Expenditures			
Expenses, actual	\$	789,932	\$ 928,393
Capital outlays		350,221	335,080
Depreciation, amortization, other		(355,417)	(285,653)
Long-term debt principal payments		146,475	 64,700
Expenditures, actual (budgetary basis)	\$	931,211	\$ 1,042,520
Appropriations, budget	\$	1,932,662	\$ 1,761,218
Unused appropriations	\$	1,001,451	\$ 718,698

Unused appropriations lapse at year-end, except the Board of Directors has the authority, as stated in the adopted appropriation resolution, to carry over the unused portion of funds for capital projects not completed, for a period not to exceed three years. As of December 31, 2019, there was approximately \$1,001,451 of unused 2019 appropriations for capital outlays available for carryover to 2020.

# NOTE K - TAX, SPENDING AND DEBT LIMITATIONS

In November 1992, Colorado voters passed an amendment (Amendment 1) to the State Constitution (Article X, Section 20) that limits the revenue raising and spending abilities of state and local governments known as the Taxpayer's Bill of Rights (TABOR). The limits on property taxes, revenue, and "fiscal year spending" include allowable annual increases tied to inflation and local growth in construction valuation. Fiscal year spending as defined by the amendment excludes spending from certain revenue and financing sources such as federal funds, gifts, property sales, fund transfers, damage awards, and fund reserves (balances). The amendment requires voter approval for any increase in mill levy tax rates, new taxes, or creation of multi-year debt. Revenue earned in excess of the "spending limit" must be refunded to the taxpayers unless voters approve retention of these revenues. In addition, the amendment mandates that reserves equal 3% of fiscal spending be established for declared emergencies.

On November 7, 1995, the voters of the District exempted the Regional Transportation District from the revenue and spending limitations concerning the Amendment through December 31, 2005. On November 2, 1999, the voters of the District further exempted RTD from the revenue and spending limitations outlined in the Amendment for the purpose of paying any debt incurred to finance the Southeast Corridor light rail project or to operate such project for as long as any debt remains outstanding, but in no event beyond December 31, 2026.

On November 2, 2004, the voters of the District authorized an increase in RTD's sales and use tax rate from 0.6% to 1.0%, effective January 1, 2005, to finance the FasTracks transit improvement program. This authorization also exempted RTD from any revenue and spending limitations on the additional tax and on any investment income generated by the increased tax revenue and allowed RTD to incur debt to finance the capital improvements included in the FasTracks program. At the time that all FasTracks debt is repaid, RTD's sales and use tax rate will be reduced to a rate sufficient to operate the rapid transit system financed through FasTracks. RTD has \$3.477 billion in authorized debt, subject to the Amendments' limitations. This debt was authorized by the voters of the District in 2004 to pay for the FasTracks rapid transit improvement program. Based on estimated fiscal year spending for 2019, \$25,940 of year-end net position has been reserved for emergencies. The Amendment is complex and subject to judicial interpretation. RTD believes it is in compliance with the requirements of the Amendment's language available at year-end.

## NOTE L – SUBSEQUENT EVENTS

In December 2019, a novel strain of the coronavirus (COVID-19) emerged in Wuhan, Hubei Province, China. The virus subsequently spread globally resulting in a worldwide pandemic which is expected to cause significant disruptions to the economy. Several measures have been implemented by governments in the District including directives for social distancing and stay-at-home orders to mitigate the spread of COVID-19. These measures have severely curtailed activity within the District with RTD experiencing an approximate 70% reduction in ridership that began in mid-March 2020. In response, RTD undertook several initiatives including safety precautions for its employees and evaluating service levels, costs and impacts to revenue. On March 26, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES) was signed into law in which grant funding through the Federal Transit Administration (FTA) of \$232 million will be made available to RTD to fund operations during the pandemic. On April 5, 2020, RTD suspended the collection of fares in accordance with social distancing measures and on April 19, 2020 RTD reduced its transit services by approximately 40% to reduce costs and adjust services to the lower demand. The extent to which COVID-19 impacts RTD's operations and financial condition will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak.

REQUIRED SUPPLEMENTARY INFORMATION

### **Required Supplementary Information**

### REGIONAL TRANSPORTATION DISTRICT Pension Plans Summary As of December 31,

#### Schedule of Contributions Multiyear Last 10 Fiscal Years\*

(in thousands)

#### ATU 1001 Pension Plan

Period Ending December 31,	 2019	2018	2017	2016	2015
Actuarially Determined Contribution	\$ 18,109 \$	17,664 \$	17,170 \$	17,131 \$	18,752
Actual Contribution	20,163	13,168	12,128	11,542	10,758
Contribution Deficiency (Excess)	 (2,054)	4,496	5,042	5,589	7,994
Covered Payroll	103,646	103,729	94,802	82,994	84,774
Contribution as a Percentage of Covered Payroll	19.45%	12.69%	12.79%	13.91%	12.69%

\* Fiscal year 2015 was the 1st year of implementation.

Valuation Date:	January 1, 2019
Notes	Actuarially determined contribution rates are calculated as of December 31st each year for implementation the following fiscal year. Actual contributions are made pursuant to a collective
	bargaining agreement.
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level Percentage of Payroll
Remaining Amortization Period	30 years
Asset Valuation Method	5-Year smoothed market
Inflation	3.00%
Salary Increases	7.00% During first 5 years of service, 3.00% after five years of service
Investment Rate of Return	7.00%
Retirement Age	Experience-based table of rates that is specific to the type of eligibility condition. Last updated for the 2015 valuation pursuant to an experience study of the period 2012-2014.
Healthy Mortality	RP-2014 Combined Mortality Table, generational projected with MP-2017.
Disabled Mortality	RP-2014 Combines Mortality Table, generational projected with MP-2017.
Other Information:	
Notes	There were no benefit changes during the year.
	There were no benefit changes during the year.

#### Schedule of Changes in the Plan's Net Pension Liability and Related Ratios Multiyear Last 10 Fiscal Years\* (in thousands)

ATU 1001 Pension Plan

Period Ending December 31,	 2019	2018	2017	2016	2015
Total Pension Liability					
Service Cost	\$ 9,045	\$ 14,387	\$ 13,145	\$ 13,074	\$ 11,937
Interest	\$ 32,102	27,099	25,276	26,324	27,714
Changes to Benefit Terms	-	-	-		-
Differences Between Expected and Actual Experience	\$ 1,596	4,855	(3,164)	(4,711)	(6,476)
Assumption Changes	-	(108,133)	(19,822)	28,095	28,879
Benefit Payments, Including Lump Sums	(28,417)	(27,233)	(26,133)	(25,439)	(24,312)
Net Change in Total Pension Liability	\$ 14,326	\$ (89,025)	\$ (10,698)	\$ 37,343	\$ 37,742
Total Pension Liability - Beginning	 463,756	552,781	563,479	526,136	488,394
Total Pension Liability · Ending (a)	\$ 478,082	\$ 463,756	\$ 552,781	\$ 563,479	\$ 526,136
Plan Fiduciary Net Position					
Contributions - RTD	\$ 20,163	\$ 13,168	\$ 12,128	\$ 11,542	\$ 10,758
Contributions - Members	\$ 4,627	4,389	4,069	3,868	3,586
Net Investment Income	\$ (8,837)	28,983	11,855	(1,829)	11,779
Benefit Payments, Including Lump Sums	\$ (28,417)	(27,233)	(26,133)	(25,439)	(24,312)
Administrative Expenses	\$ (391)	(411)	(364)	(391)	(355)
Other	 -	-	-		-
Net Change in Plan Fiduciary Net Position	\$ (12,855)	\$ 18,896	\$ 1,555	\$ (12,249)	\$ 1,456
Plan Fiduciary Net Position - Beginning	222,666	203,770	202,215	214,464	213,008
Plan Fiduciary Net Position - Ending (b)	\$ 209,811	\$ 222,666	\$ 203,770	\$ 202,215	\$ 214,464
Plan's Net Pension Liability - Beginning					
Plan's Net Pension Liability · Ending (a) - (b)	\$ 268,271	\$ 241,090	\$ 349,011	\$ 361,264	\$ 311,672
Plan Fiduciary Net Position as a Percentage of the Total					
Pension Liability (b) / (a)	43.89%	48.01%	36.86%	35.89%	40.76%
Covered Payroll	103,646	103,729	94,802	82,994	84,774
Plan's Net Pension Liability as a Percentage of Covered Payroll	258.83%	232.42%	368.15%	435.29%	367.65%

Notes to Schedule:

Assumption changes for the Fiscal Year Ending December 31, 2016 (December 31, 2015 measurement date, January 1, 2015 actuarial valuation date): Assumption changes were a result of a change in the Single Discount Rate changing from 5.00 percent to 4.54 percent, measured at the end of the year.

Assumption changes for the Fiscal Year Ending December 31, 2017 (December 31, 2016 measurement date, January 1, 2016 actuarial valuation date): The mortality assumptions were updated to RP-2014 blue-collar tables published by the Society of Actuaries with project scale MP-2017. This change increased the liabilities by 2.113 million.

\* Fiscal year 2015 was the 1st year of implementation.

# Schedule of Contributions Multiyear

# Last 10 Fiscal Years\*

(in thousands)

## RTD Salaried Pension Plan

Period Ending December 31,	 2019	2018	2017	2016	2015
Actuarially Determined Contribution	\$ 7,954	\$ 7,296	\$ 7,632	\$ 6,768	\$ 5,682
Actual Contribution	 5,100	4,600	4,100	3,100	3,100
Contribution Deficiency (Excess)	 2,854	2,696	3,532	3,668	2,582
Covered Payroll	26,460	27,619	30,378	31,257	 30,880
Contribution as a Percentage of Covered Payroll	19.27%	16.66%	13.50%	9.92%	10.04%

\* Fiscal year 2015 was the 1st year of implementation.

- Actuarial Methods and Assumptions Used to Calculate Actuarially Determine Contribution Union:

···· /··· /··· /··· /··· /··· /··· /··		,						
Valuation Date:	January 1, 2019							
Notes	Actuarially determi	Actuarially determined contribution rates are calculated as of January 1, twelve months prior to end of the fiscal year in which contributions are reported.						
Actuarial Cost Method	Entry Age	Entry Age						
Amortization Method	Level dollar, fixed a	and declining 20 years.						
Remaining Amortization Period	12years							
Asset Valuation Method	Smoothed over 5 y	ears, based on Actuarial Value of Assets expected return.						
Inflation	2.75%							
Salary Increases	3.70%-6.45%, bas	ed on age						
Investment Rate of Return	7.00%, net of inve	stment expenses						
Retirement Age	Age	Rate						
	55	5.0%						
	55-61	10.00%						
	62	25.00%						
	63-64	15.00%						
	65-69	40.00%						
	70 or older	100.00%						
	Vested inactive par	ticipants are assumed to retire at age 64.						
Mortality (Annuities)	RP-2014 Mortality	Tables for healthy employees and annuitants (adjusted to 2006), and projected to 2022 using the MP-2017 mortality improvement scale.						
	Disabled Participan	ts: RP-2014 Disabled Retiree Tables.						
Mortality (Lump Sums)	RP-2014 Mortality	Tables for healthy employees and annuitants (adjusted to 2006), and projected to 2022 using the MP-2017 mortality improvement scale,						
	blended 70% male	/ 30% female for participants and 30% male / 70% female for beneficiaries.						
Other Information:	401(a) 17 compens	sation and 415 limits are assumed to increase with inflation.						
	Turnover: 0.00% -	9.93%, based on age						
	Disablement: 0.03	%81%, based on age						
	Expenses: \$140 pe	er year payable monthly						

#### Schedule of Changes in the Plan's Net Pension Liability and Related Ratios Multiyear Last 10 Fiscal Years\*

(in thousands)	
RTD Salaried Pension Plan	

RTD Salaried Pension Plan						
Period Ending December 31,	2019	2018	2017	2016	2015	
Total Pension Liability					 	
Service Cost	\$ 3,000	\$ 3,201	\$ 3,587	\$ 3,342	2,673	
Interest	\$ 12,624	12,351	11,371	10,388	9,366	
Changes to Benefit Terms						
Differences Between Expected and Actual Experience	\$ (1,981)	(816)	6,716	3,869	2,228	
Assumption Changes	\$ 7,844			3,601	6,997	
Benefit Payments, Including Lump Sums	 (12,465)	(9,339)	(7,092)	(9,582)	 (7,034)	
Net Change in Total Pension Liability	\$ 9,022	\$ 5,397	\$ 14,582	\$ 11,618	\$ 14,230	
Total Pension Liability · Beginning	 171,550	166,153	151,571	139,953	 125,723	
Total Pension Liability · Ending (a)	\$ 180,572	\$ 171,550	\$ 166,153	\$ 151,571	\$ 139,953	
Plan Fiduciary Net Position						
Contributions - RTD	\$ 5,100	\$ 4,600	\$ 4,100	\$ 3,100	\$ 3,100	
Contributions - Members						
Net Investment Income	\$ (7,143)	18,322	11,337	(610)	9,078	
Benefit Payments, Including Lump Sums	\$ (12,465)	(9,339)	(7,092)	(9,582)	(7,034)	
Administrative Expenses	\$ (188)	(177)	(166)	(141)	(127)	
Other						
Net Change in Plan Fiduciary Net Position	\$ (14,696)	\$ 13,406	\$ 8,179	\$ (7,233)	\$ 5,017	
Plan Fiduciary Net Position · Beginning	 144,362	130,956	122,777	130,010	 124,993	
Plan Fiduciary Net Position · Ending (b)	\$ 129,666	\$ 144,362	\$ 130,956	\$ 122,777	\$ 130,010	
Plan's Net Pension Liability - Beginning	 28,794	28,794	28,794	9,943	 730	
Plan's Net Pension Liability - Ending (a) - (b)	\$ 50,906	\$ 27,188	\$ 35,197	\$ 28,794	\$ 9,943	
Plan Fiduciary Net Position as a Percentage of the Total Pension Liability (b) / (a)	71.81%	84.15%	78.82%	81.00%	92.90%	
Covered Payroll	26,460	27,619	30,378	31,257	30,880	
Plan's Net Pension Liability as a Percentage of Covered Payroll	192.39%	98.44%	115.86%	92.12%	32.20%	

#### Notes to Schedule:

Assumption changes for the Fiscal Year Ending December 31, 2018: Effective with the January 1, 2018 valuation, the following actuarial assumptions were updated: investment rate of return, interest discount rate, operating expenses, salary scale, mortality tables for annuity and lump sum elections, lump sum election rates, active retirement rates, vested inactive retirement age, termination rates, disability rates, and marriage assumption.

Assumption changes for the Fiscal Year Ending December 31, 2019: Effective with the January 1, 2019 valuation, the operating expense assumption was increased from \$135,000 per year, payable monthly, to \$140,000 per year, payable monthly, with a 2% annual increase thereafter (described in the Notes to Schedule).

Changes to Benefit Terms for the Fiscal Year Ending December 31, 2018: Effective January 1, 2019, the interest rate and mortality table for lump sum payments and optional payment form conversions were updated to be consistent with the changes reflected in the January 1, 2018 actuarial valuation

Changes to Benefit Terms for the Fiscal Year Ending December 31, 2019: None.

\* Fiscal year 2015 was the 1st year of implementation.

SUPPLEMENTAL INFORMATION

#### REGIONAL TRANSPORTATION DISTRICT SCHEDULE OF EXPENSE AND REVENUE BUDGET AND ACTUAL - BUDGETARY BASIS Year Ended December 31, 2019 (In Thousands)

(In Thousands)		Adopted		Final		A		Variance - positive
		Budget		Budget		Actual		(negative)
Operating revenue Passenger fares	\$	163,600	ė	163,600	\$	154,390	\$	(9,210)
-	ş	5,616	\$	5,616	Ŷ		Ŷ	
Other		169,216		169,216		<u>6,553</u> 160,943		937
Total operating revenue		109,210		109,210		100,945		(8,273)
Operating expenses Salaries and wages		206,691		204,485		196,505		7,980
Fringe benefits		75,586		204,403 74,519		54,569		19,950
Materials and supplies		68,932		63,563		54,983		8,580
Services		145,914		139,262		96,085		43,177
Utilities		20,492		19,926		17,823		2,103
Insurance		14,190		14,151		10,833		3,318
Purchased transportation		210,275		211,016		203,559		7,457
Leases and rentals		2,470		3,090		3,204		(114)
Miscellaneous		10,862		7,204		5,053		2,151
Total operating expenses		755,412		737,216		642,614		94,602
		700,412		707,210		042,014		04,002
Operating loss		(586,196)		(568,000)		(481,671)		86,329
Nonoperating revenue (expenses)		(000,100)		(000,000)				00,020
Sales and use tax		668,330		662,376		659,418		(2,958)
Grant operating assistance		95,293		92,013		86,263		(5,750)
Investment income		15,695		15,695		17,669		1,974
Other income		12,679		12,871		26,582		13,711
Gain/loss on capital assets		,		,.,.		(2,452)		(2,452)
Interest expense		(152,155)		(152,155)		(200,845)		(48,690)
Other expense/unrealized loss capital assets						(672)		(672)
Total nonoperating revenue (expenses)		639,842		630,800		585,963		(44,837)
Proceeds from debt						(96,071)		(96,071)
Capital outlay						(00/07 1/		(00/07 1)
Capital expenses		830,745		693,520		350,221		(343,299)
Less capital grants		(275,592)		(266,591)		(124,497)		142,094
		555,153		426,929		225,724		(201,205)
Long-term debt principal payment		(76,771)		(76,771)		(146,475)		(69,704)
Excess (deficiency) of revenue and nonoperating		(70,771)		(70,771)		(1+0,+7.0)		(00,704)
income over (under) expenses, capital								
outlays and debt principal payments	ė	(578,278)	ė	(440,900)		(363,978)	é	76,922
Increases (decreases) to reconcile	\$	(370,270)	ş	(440,900)		(303,970)	\$	70,922
budget basis to GAAP basis								
Capital expenses						350,221		
Proceeds from debt						96,071		
Long-term debt principal payment						146,475		
Depreciation						(355,417)		
INCREASE IN NET POSITION					\$	(126,628)		

## STATISTICAL SECTION

This part of the Regional Transportation District's comprehensive annual financial report presents detailed information as a context for understanding what the information in the financial statements, note disclosure, and required supplementary information says about the government's overall financial health.

Contents	Page
Financial Trends	93-95

These tables contain trend information to help the reader understand how the government's financial performance and well-being have changed over time.

**Revenue Capacity** 

These tables contain information to help the reader assess the government's most significant revenue source.

**Debt Capacity** 

These tables contain information to help the reader asses the affordability of the government's current levels of outstanding debt and the government's ability to issue additional debt in the future.

Demographic and Operating Information

These tables contain service and infrastructure data to help the reader understand how the information in the financial report relates to service the government provides and the activities it performs. The demographic and economic indicators help the reader understand the environment within which the government's financial activities take place.

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# REGIONAL TRANSPORTATION DISTRICT NET POSITION BY COMPONENT<sup>1</sup> (In Thousands)

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Invested in capital assets, net of related debt (Note I) Restricted (Note I)	\$ 2,987,538	\$ 3,144,175	\$ 3,135,186	\$ 3,135,186	\$ 2,936,397	\$ 2,987,697	\$ 2,788,100	\$ 2,348,966	\$ 1,872,790	\$ 1,597,631
Emergencies	25,940	24,079	25,735	21,609	20,284	19,193	18,304	17,451	16,392	15,486
Debt and other	488,810	502,558	475,792	395,948	304,667	155,345	117,827	316,711	491,313	424,348
Total restricted net position <sup>2</sup>	514,750	526,637	501,527	417,557	324,951	174,538	136,131	334,162	507,705	439,834
Unrestricted net position (note H)	(165,410)	(207,306)	(223,204)	(214,479)	(84,409)	18,842	53,218	45,782	46,199	166,299
Total net position	\$ 3,336,878	\$ 3,463,506	\$ 3,413,509	\$ 3,338,264	\$ 3,176,939	\$ 3,181,077	\$ 2,977,449	\$ 2,728,910	\$ 2,426,694	\$ 2,203,764

<sup>1</sup> Data is taken from the financial records of RTD and is presented on the accrual basis.

 $^{2}\,\rm Retricted$  net position for 2016 and 2015 has been restated by category.

Table 1

# REGIONAL TRANSPORTATION DISTRICT

# SUMMARY OF STATEMENTS OF REVENUES, EXPENSES

AND CHANGES IN NET POSITION (In Thousands)

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Operating Revenues:										
Passenger Fares	\$ 154,390	\$ 143,231	\$ 140,217	\$ 134,622	\$ 120,497	\$ 120,497	\$ 117,841	\$ 112,929	\$ 108,497	\$ 97,942
Other	6,553	7,535	7,159	5,803	5,347	4,406	5,199	5,333	4,882	4,414
Total Operating Revenues	160,943	150,766	147,376	140,425	125,844	124,903	123,040	118,262	113,379	102,356
Operating Expenses:										
Salaries, wages, fringe benefits	251,074	236,892	263,977	260,039	227,207	204,790	192,405	178,974	166,332	160,498
Materials and supplies	54,983	51,335	44,686	52,180	58,884	62,156	64,798	58,300	52,015	48,310
Services	96,085	81,189	77,323	58,560	79,749	108,920	112,479	109,853	48,357	60,553
Utilities	17,823	16,419	16,503	14,220	13,673	14,151	13,567	11,833	11,627	10,977
Insurance	10,833	9,941	13,319	10,382	8,102	5,273	5,568	3,776	6,089	5,429
Purchased transportation	203,559	176,416	159,051	156,605	113,216	114,942	113,006	111,130	108,865	104,514
Leases and rentals	3,204	1,996	2,829	3,288	3,462	3,264	3,210	2,401	1,964	2,515
Miscellaneous	5,053	4,317	4,213	4,183	4,531	6,561	6,448	15,741	2,082	3,315
Total Operating Expenses	642,614	578,505	581,901	559,457	508,824	520,057	511,481	492,008	397,331	396,111
Operating loss before depreciation	(481,671)	(427,739)	(434,525)	(419,032)	(382,947)	(395,154)	(388,441)	(373,746)	(283,952)	(293,755)
Depreciation	355,417	285,653	248,633	222,154	152,531	139,045	127,256	115,269	104,280	104,176
Operating Loss	(837,088)	(713,392)	(683,158)	(641,186)	(535,478)	(534,199)	(515,697)	(489,015)	(388,232)	(397,931)
Nonoperating income (expense):										
Sales and use tax revenues	659,418	634,192	598,187	563,598	541,518	514,721	468,586	449,787	415,180	397,549
Grant operating assistance	86,263	86,403	80,412	77,335	73,383	75,544	88,243	68,927	89,592	92,655
Interest income	17,669	13,409	63,030	6,371	3,164	165	2,040	2,613	6,484	8,065
Other income	26,582	12,618	10,596	9,927	10,322	10,248	28,170	11,035	11,356	3,653
Gain/Loss on Capital Assets	(2,452)	(1,449)	4,022	5,664	1,085	6,613	(82)	3,459	(6,101)	(3,474)
Interest expense	(200,845)	(62,770)	(65,346)	(77,272)	(79,686)	(72,293)	(61,223)	(51,371)	(51,274)	(48,735)
Other expense/Unrealized Loss Assets	(672)	(16)	(2,981)	(1,258)	(1,422)	(3,605)	(4,064)	(4,895)	(150)	(1,671)
Total Nonoperating Income	585,963	682,387	687,920	584,365	548,364	531,393	521,670	479,555	465,087	448,042
Net income before										
capital grants and local contributions	(251,125)	(31,005)	4,762	(56,821)	12,886	(2,806)	5,973	(9,460)	76,855	50,111
Capital grants and local contributions	124,497	81,002	86,395	202,235	169,313	206,431	242,566	311,676	238,292	107,478
Increase in Net Position	(126,628)	49,997	91,157	145,414	182,199	203,625	248,539	302,216	315,147	157,589
Net Position, Beginning of Year, (as previously reported)	3,463,506	3,413,509	3,322,352	3,176,938	3,181,074	2,977,449	2,728,910	2,426,694	2,203,764	2,046,175
Change in accounting principle, (note A)					(186,335)					
Net Position, Beginning of Year, (as restated)					2,994,739					
Prior Period Adjustment	. <u></u>								(92,217)	
Net Position at End of Year	\$ 3,336,878	\$ 3,463,506	\$ 3,413,509	\$ 3,322,352	\$ 3,176,938	\$ 3,181,074	\$ 2,977,449	\$ 2,728,910	\$ 2,426,694	\$ 2,203,764

Table 2

#### Last Ten Years (Unaudited)

### (In Thousands)

	Transit	Planning,			Other		
	Operating	Administrative		Interest	Nonoperating	Capital	
Year	Expenses <sup>2</sup>	and Development	Depreciation	Expense <sup>2</sup>	Expenses	Outlays <sup>2</sup>	Total
2010	\$ 318,751	\$ 77,360	\$ 104,176	\$ 48,735	\$ 5,145	\$ 712,552	1,266,719
2011	333,301	64,030	104,280	51,274	6,251	616,953	1,176,089
2012	414,893	77,115	115,269	51,371	4,895	702,119	1,365,662
2013	429,700	81,781	127,256	61,223	4,146	769,359	1,473,465
2014	436,905	83,152	139,045	72,293	3,605	862,701	1,597,701
2015	427,468	81,356	152,531	79,686	1,422	870,055	1,612,518
2016	470,005	89,452	222,154	77,272	1,258	693,159	1,553,300
2017	491,673	90,228	248,633	65,346	2,981	451,245	1,350,106
2018	488,277	90,228	285,653	62,770	1,465	335,080	1,263,473
2019	536,119	106,495	355,417	200,845	3,124	350,221	1,552,221

<sup>1</sup> Data is taken from the financial records of RTD and is presented on the accrual basis.

<sup>2</sup> RTD capitalizes certain interest costs, which are included in capital outlays.

#### REGIONAL TRANSPORTATION DISTRICT REVENUE BY SOURCE<sup>1</sup> Last Ten Years (Unaudited) (In Thousands)

						Grant								Τι	otal Revenue
	0	perating	5	Sales/Use	0	perating	In	terest		Total	Capital	1	Local	and	Capital Grant
Year	F	levenues		Tax	As	sistance	lı	ncome	 Other	Revenue	 Grants	Cont	ributions	&	Contributions
 2010	\$	102,356	\$	397,549	\$	92,655	\$	8,065	\$ 3,653	\$ 604,278	\$ 102,213	\$	5,265	\$	711,756
2011		113,379		415,180		89,592		6,484	11,356	635,991	186,073		52,219		874,283
2012		118,262		449,787		68,927		2,613	14,494	654,083	193,991		117,685		965,759
2013		123,040		468,586		88,243		2,040	28,170	710,079	159,783		82,783		952,645
2014		124,903		514,721		75,544		165	16,861	732,194	171,549		34,882		938,625
2015		125,877		541,518		73,383		3,164	11,407	755,349	157,616		11,697		924,662
2016		140,525		563,598		77,335		6,371	15,591	803,420	185,324		16,911		1,005,655
2017		147,376		598,187		80,412		63,030	14,618	903,623	75,500		10,895		990,018
2018		150,766		634,192		86,403		13,409	12,618	897,388	52,229		28,773		978,390
2019		160,943		659,418		86,263		17,669	24,130	948,423	116,303		8,194		1,072,920

<sup>1</sup> Data is taken from the financial records of RTD and is presented on the accrual basis.

		Sales Tax	Bond Deb	ot Service Requi	rements	5	Sales Tax	Coverage
	h	nterest	P	rincipal		Total	 Collections	Ratio
2010	\$	46,324	\$	44,511	\$	90,835	\$ 397,549	4.38
2011		70,646		25,010		95,656	415,180	4.34
2012		70,752		26,211		96,963	449,787	4.64
2013		76,786		20,725		97,511	541,518	5.55
2014		84,821		25,712		110,533	514,721	4.66
2015		84,101		26,438		110,539	541,518	4.90
2016		83,490		27,043		110,533	563,598	5.10
2017		89,033		25,364		114,397	598,187	5.23
2018		86,542		26,235		112,777	634,192	5.62
2019		85,662		18,715		104,377	659,418	6.32

#### LAST TEN YEARS (UNADUITED)

### **Certificate of Participation Debt Service Requirements**

	 Interest	 Principal	 Total
2010	\$ 13,711	\$ 26,725	\$ 40,436
2011	28,973	25,955	54,928
2012	28,451	28,575	57,026
2013	31,285	25,735	57,020
2014	43,502	31,290	74,792
2015	57,226	27,910	85,136
2016	62,373	34,655	97,028
2017	56,071	32,702	88,773
2018	53,669	38,465	92,134
2019	51,941	48,620	100,561

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### **REGIONAL TRANSPORTATION DISTRICT**

#### DEBT COVERAGE RATIOS (Continued)

(In Thousands)

	Total	Debt Se	rvice Requireme	nts		Total	Coverage
	 Interest		Principal		Total	 Revenue	Ratio
2010	\$ 60,035	\$	71,236	\$	131,271	\$ 573,460	4.37
2011	99,619		50,965		150,584	654,083	4.34
2012	99,203		54,786		153,989	874,283	5.68
2013	108,071		46,460		154,531	965,494	6.25
2014	128,323		57,002		185,325	952,645	5.14
2015	141,327		54,348		195,675	938,645	4.80
2016	145,863		61,698		207,561	924,662	4.45
2017	145,104		58,066		203,170	990,018	4.87
2018	140,211		64,700		204,911	978,390	4.77
2019	137,603		67,335		204,938	1,072,920	5.24

<sup>1</sup> Source: The financial records of RTD and the Offical Statements of the respective debt issues.

#### **REGIONAL TRANSPORTATION DISTRICT**

DEMOGRAPHIC AND OPERATING DATA

Last Ten Years (Unaudited)

_	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
January 1 population within RTD										
service area <sup>1</sup>	3,090,000	3,080,000	2,920,000	2,920,000	2,870,000	2,870,000	2,800,000	2,800,000	2,800,000	2,800,000
Cities and towns served	40	40	40	40	40	40	40	40	40	40
Square miles in service area	2,342	2,342	2,342	2,342	2,340	2,340	2,340	2,340	2,348	2,348
Total miles	64,369,963	59,239,576	49,348,647	44,368,116	47,575,444	45,746,927	45,246,715	38,824,067	42,996,614	41,449,988
Passenger stops	9,800	9,800	9,077	9,077	9,566	9,751	9,509	9,841	9,698	10,140
Number of fixed routes	169	169	172	172	137	138	136	145	138	148
Local	107	107	115	115	69	65	65	71	64	66
Express	-	-	-	-	15	14	14	17	16	20
Regional	23	23	16	16	20	17	17	17	17	16
Skyride	3	3	3	3	5	5	5	5	5	5
Boulder City	13	13	13	13	13	13	13	13	12	14
Longmont City	4	4	4	4	4	4	4	4	4	7
Limited	14	14	16	16	18	11	11	10	11	11
Miscellaneous	5	5	5	5	8	9	7	7	9	9
Ridership average weekday,										
without Mall Shuttle and Light Rail	183,293	183,293	193,391	197,637	208,086	211,702	208,387	210,811	205,504	209,172
Ridership average weekday,										
including Mall Shuttle	221,938	221,938	229,966	236,573	252,034	255,696	254,071	255,501	254,197	255,068
Ridership average weekday,										
including Mall Shuttle, Light Rail,										
ADA, and Van Pool	321,891	321,891	326,413	331,580	338,363	344,348	335,391	326,747	325,900	323,311
Total annual boardings without										
Mall Shuttle, Light Rail and ADA	61,091,654	61,091,654	64,457,209	59,005,677	62,833,246	63,935,032	63,010,579	63,640,443	61,634,723	62,902,963
Total annual boardings, including										
Mall Shuttle	71,366,204	71,366,204	73,947,723	71,345,729	76,257,759	77,464,530	77,079,604	77,320,228	76,577,627	76,825,609
Total annual boardings, including	,,	,,			-, - ,	, . ,			-,- ,-	-,
Mall Shuttle, Light Rail and CRT	104,307,853	104,307,853	105,773,275	100,248,216	101,776,337	103,851,061	100,844,239	97,959,296	97,272,342	96,657,335
Total annual boardings, including										
Mall Shuttle, Light Rail,										
ADA service, and Van Pool	105,388,415	105,388,415	106,849,922	101,322,384	102,991,663	104,987,248	101,966,009	99,122,065	98,384,882	97,724,928
Daily miles operated (average weekday),				- ,- ,						- , ,
including Mall Shuttle	176,356	124,202	124,688	120,613	119,076	107,635	106,709	129,517	117,261	124,248
Daily miles operated (average			,		-,					, -
weekday), including Mall Shuttle										
and Light Rail	141,621	141,621	142,489	136,677	131,221	119,706	118,385	139,083	126,849	134,294
Diesel fuel consumption, gallons <sup>2</sup>	5,178,712	5,238,000	5,550,000	5,550,000	5,550,000	5,550,000	5,600,000	5,400,000	5,400,000	5,200,000
Total active buses	1,030	1,026	1,023	1,023	1,021	1,011	992	998	969	1,025
Wheelchair lift equipped buses	1,030	1,026	1,023	1,023	1,021	1,011	992	998	969	1,025
Number of employees <sup>2</sup>	1,000	1,020	.,020	1,020	.,021	.,	002			1,020
Salaried	870	870	817	779	779	735	752	700	697	696
Represented (includes part-time)	2,018	2,018	1,962	2,034	1,955	1,929	1,901	1,715	1,785	1,744
Fleet requirements ( peak hours)	841	841	834	834	834	821	785	779	797	806
Operating facilities <sup>2</sup>	7	7	7	7	7	7	6	6	6	6
operating ratilities	1	1	/	/	/	/	0	0	0	0

<sup>1</sup> Source: Population is based on estimates provided by the Denver Regional Council of Governments. All other data comes from the financial records of RTD.

<sup>2</sup> Excludes purchased transportation services.

## Debt Disclosure Tables for 2018 CAFR

CAFR	
Table	Table Title
7	SBP Operations Program
8	SBP Capital Program
9	RTD Statement of Debt
10	RTD Annual Ridership and Fare Revenue
11	RTD Advertising and Ancillary Revenues
12	RTD Federal Grant Receipts
13	Five-Year Summary of Revenue/Expense Statements
14	Five-Year Summary of Budget/Actuals
15	RTD 2018 and 2019 Budget
16	Trip Fares
17	RTD Net Retail Sales

# Debt Disclosure Tables Updated in Body of 2018 CAFR

Table Title	Location in CAFR
RTD Revenues by Source	Statistical Section – Table 4
Summary Balance Sheet	Statements of
	Net Position – pg. 38-39

#### **REGIONAL TRANSPORTATION DISTRICT**

2020-2025 MID-TERM FINANCIAL PLAN - OPERATING PROGRAM (In Thousands)

Program	 2020	2021	 2022	 2023	 2024	 2025	т	otal Cost
Interest Payments <sup>1,2</sup>	\$ 16,834	\$ 14,353	\$ 13,023	\$ 11,072	\$ 9,168	\$ 7,173	\$	71,623
Bus Operations – Current RTD	143,549	146,955	150,776	154,624	158,600	162,604		917,108
Bus Operations – Private Carrier after Contract	112,955	117,308	121,362	124,645	130,709	134,823		741,802
Bus Operations - call-n-Ride	8,468	8,685	8,911	9,138	9,374	9,611		54,187
Private Contract Administration Costs	425	436	447	459	470	482		2,719
Service Increases – RTD-Operated	401	401	401			-		1,203
Service Increases – Private Contractor	303	302	302		-	-		907
FasTracks Service Allocation - Bus <sup>1</sup>	(17,214)	(17,660)	(18,125)	(18,593)	(19,077)	(19,565)		(110,234)
Cost Sharing Agreements - Bus Service	4,318	4,429	4,546	4,663	4,785	4,907		27,648
Rail Operations	65,381	67,074	68,840	70,619	72,456	74,308		418,678
ADA Operating Costs	53,760	56,604	59,710	63,046	66,695	70,621		370,436
FasTracks Service Allocation - ADA <sup>1</sup>	(2,128)	(2,183)	(2,240)	(2,298)	(2,358)	(2,418)		(13,625)
Safety & Secuirty - Base	25,999	26,672	27,374	28,082	28,812	29,549		166,488
Safety & Security - Additional Costs	637	758	1,626	1,668	1,712	1,895		8,296
Capital Programs & Facilities - Base	41,074	42,358	43,473	44,596	45,757	46,926		264,184
Capital Programs & Facilities- Additional Costs	128	2,020	3,535	2,292	432	443		8,850
Direct Costs - Other Departments	20,173	20,694	21,237	21,783	22,348	22,918		129,153
Indirect Costs - Other Departments	112,031	113,217	117,205	119,781	121,530	144,807		728,571
FasTracks - Cost Allocation	 (41,479)	 (42,553)	 (43,673)	 (44,802)	 (45,967)	 (47,142)		(265,616)
Grand Total	\$ 545,615	\$ 559,870	\$ 578,730	\$ 590,775	\$ 605,446	\$ 641,942	\$	3,522,378

<sup>1</sup> Interest payments are not presented in year of expenditure dollars. All other operating expenses are presented in year of expenditure dollars.

<sup>2</sup> Interest payments on bonds and certificates of participation (COPS) issued for purposes other than FasTracks.

## REGIONAL TRANSPORTATION DISTRICT 2020-2025 STRATEGIC BUDGET PLAN - CAPITAL PROGRAM (In Thousands)

Program	 2020	 2021	 2022	 2023	 2024	 2025	T	otal Cost
Lona Term Debt Service <sup>1,2</sup>	\$ 65,793	\$ 64,711	\$ 60,676	\$ 49,516	\$ 51,412	\$ 43,819	\$	335,927
Fleet Modernization and Expansion <sup>3</sup>								
Buses and ADA Vehicles	20,504	33,862	59,765	18,441	31,757	8,842		173,171
Other		-	432	222	227	•		881
Light Rail Vehicles		-	-					-
Transfer Stations <sup>3</sup>	2,051	-	-					2,051
Rail Construction <sup>3</sup>	4,974	3,840	4,697	3,434	2,728	1,748		21,421
Rail Transit <sup>3</sup>	2,307	1,315	4,643	3,102	2,614	-		13,981
Capital Support Equipment <sup>3</sup>								
Vehicles and Bus Maintenance Equipment	600	299	4,631	4,012	3,166	4,089		16,797
Information Systems, Computer Equip. for Ops.	3,528	789	594	332	-	•		5,243
Capital Support Projects <sup>3</sup>	256	263	270	277	284	10,004		11,354
Facilities Construction and Maintenance3	6,070	334	4,107	6,209	13,792	60,196		90,708
Planning <sup>3</sup>	-	-		33,231				33,231
Treasury <sup>3</sup>	5,155		1,512					6,667
Unallocated Capital <sup>3</sup>	-	-	-		-	-		
Grand Total	\$ 111,238	\$ 105,413	\$ 141,327	\$ 118,776	\$ 105,980	\$ 128,698	\$	711,432

<sup>1</sup> Principal payments are set at the time the bonds are issued and do not change with inflation.

<sup>2</sup> Long-term debt service costs include principal payments on bonds and COPs and are not presented in year of expenditure dollars.

<sup>3</sup>Capital expenditures and discretionary capital amounts are presented in year of expenditure dollars.

Sales Tax Bonds	 Outstanding <sup>2</sup>
RTD Sales Tax Revenue Refunding Bonds, Series 2007 <sup>1</sup> · FasTracks	\$ 249,070
RTD Sales Tax Revenue Refunding Bonds, Series 2007 <sup>1</sup>	50,806
RTD Sales FasTracks Tax Revenue Bonds, Series 2010AB <sup>1</sup>	300,000
RTD Sales FasTracks Tax Revenue Bonds, Series 2012A <sup>1</sup>	525,713
RTD Sales Tax Revenue Bonds, Series 2013A <sup>1</sup>	7,819
RTD Sales FasTracks Tax Revenue Bonds, Series 2013AB <sup>1</sup>	237,691
RTD Sales Tax TIFIA Loan <sup>4</sup>	335,619
RTD Sales FasTracks Tax Revenue Bonds, Series 2016A <sup>1</sup>	226,431
RTD Sales FasTracks Tax Revenue Bonds, Series 2017A <sup>1</sup>	88,975
RTD Sales FasTracks Tax Revenue Bonds, Series 2017B <sup>1</sup>	138,470
RTD Sales FasTracks Tax Revenue Bonds, Series 2019A <sup>1</sup>	82,740
Total Sales Tax Revenue Debt	\$ 2,243,334

Lease Purchase Agreements	 Outstanding <sup>2</sup>
Master Lease Purchase Agreement II Fixed Rate Taxable Certificates of Participation, Series 2007A	3,295
Master Lease Purchase Agreement II Fixed Rate Certificates of Participation, FasTracks Series 2010AB Master Lease Purchase Agreement II Fixed Rate Certificates of Participation, Series 2013A	193,444 162,157
Master Lease Purchase Agreement II Fixed Rate Certificates of Participation, Series 2014A	461,660
Master Lease Purchase Agreement II Fixed Rate Certificates of Participation, Series 2015A	128,037
2016A JPM Lease Puchase Agreement Refunding	38,242
2017A JPM Lease Puchase Agreement Refunding	153,140
Total Certificates of Participation Debt	\$ 1,139,975
Total Debt	\$ 3,383,309
RTD Distirct Populaiton <sup>3</sup>	3,200,000
Per Capita Debt Requirement	\$ 1,057

<sup>1</sup> The Bond Resolution pursuant to which the RTD Sales Tax Revenue Bonds are issued provides that pledged for the payment of such Bonds are the Sales Tax Revenues and "any additional revenues legally available to RTD which the Board in its discretion may hereafter by Supplemental Resolution pledge to the payment of the Bonds".

<sup>2</sup> RTD is current on its obligations under all such debt.

<sup>3</sup> Population is based on estimates provided by the Denver Regional Council of Governments.

<sup>4</sup> Capitalized interest thru 2020

(In Thousands)

	Revenue	Fare	Percent Change in Fare
Year	Boardings <sup>1</sup>	 Revenue	Revenue
2010	83,732	\$ 97,942	1.1%
2011	83,428	108,497	10.8%
2012	85,442	112,929	4.1%
2013	87,820	117,841	4.3%
2014	91,049	120,497	2.3%
2015	88,927	120,530	0.0%
2016	88,982	134,622	11.7%
2017	87,823	140,217	4.2%
2018	95,114	143,231	2.1%
2019	95,041	154,390	7.8%

<sup>1</sup> Totals for 2010-2019 include both access-a-Ride boardings and vanpool boardings.

#### **ADVERTISING AND ANCILLARY REVENUES - 2010-2019**

#### (In Thousands)

	٨dv	/ertising	Ancillary					
Year	Re	evenue	Revenues					
2010	\$	3,301	\$	2,892				
2011		3,992		2,528				
2012		3,524		2,214				
2013		2,924		20,123				
2014		4,324		2,085				
2015		4,160		1,186				
2016		3,722		2,081				
2017		4,280		2,879				
2018		4,433		3,102				
2019		4,482		2,071				

#### **GRANT RECEIPTS AND LOCAL CONTRIBUTIONS** - 2010-2019

(In Thousands)

		Grant	Local	Gran	t Operating	
Year	Capital		 Contributions	Assistance		
2010	\$	102,213	\$ 5,285	\$	92,655	
2011		186,073	52,219		89,592	
2012		193,991	117,685		68,927	
2013		159,783	82,783		88,243	
2014		171,549	34,882		75,544	
2015		157,616	11,697		73,383	
2016		185,324	16,911		77,335	
2017		75,500	10,895		80,412	
2018		52,229	28,773		86,403	
2019		116,303	8,194		86,263	
2014 2015 2016 2017 2018		171,549 157,616 185,324 75,500 52,229	34,882 11,697 16,911 10,895 28,773		75,544 73,383 77,335 80,412 86,403	

# Table 11

Table 12

Table 10

#### REGIONAL TRANSPORTATION DISCTRICT FIVE-YEAR SUMMARY OF STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

(In Thousands)

(In Thousands)					
			Years ended December 3	1	
	 2019	2018	2017	2016	 2015
Operating Revenues:					
Passenger Fares	\$ 154,390	\$ 143,231	\$ 140,217	\$ 134,622	\$ 120,530
Other	 6,553	7,535	7,159	5,803	 5,347
Total Operating Revenues	 160,943	150,766	147,376	140,425	 125,877
Operating Expenses:					
Salaries, wages, fringe benefits	251,074	236,892	263,977	260,039	227,207
Materials and supplies	54,983	51,335	44,686	52,180	58,884
Services	96,085	81,189	77,323	58,560	79,749
Utilities	17,823	16,419	16,503	14,220	13,673
Insurance	10,833	9,941	13,319	10,382	8,102
Purchased transportation	203,559	176,416	159,051	156,605	113,217
Leases and rentals	3,204	1,996	2,829	3,288	3,462
Miscellaneous	 5,053	4,317	4,213	4,183	 4,531
Total Operating Expenses	 642,614	578,505	581,901	559,457	 508,825
Operating loss before depreciation	(481,671)	(427,739)	(434,525)	(419,032)	(382,947)
Depreciation	 355,417	285,653	248,633	222,154	 152,531
Operating Loss	(837,088)	(713,392)	(683,158)	(641,186)	(535,478)
Nonoperating income (expense):					
Sales and use tax revenues	659,418	634,192	598,187	563,598	541,518
Grant operating assistance	86,263	86,403	80,412	77,335	73,383
Interest income	17,669	13,409	63,030	6,371	3,164
Other income	26,582	12,618	10,596	9,927	10,322
Gain/Loss on Capital Assets	(2,452)	(1,449)	4,022	5,664	1,085
Interest expense	(200,845)	(62,770)	(65,346)	(77,272)	(79,686)
Other expense/Unrealized Loss	 (672)	(16)	(2,981)	(1,258)	 (1,422)
Total Nonoperating Income	 585,963	682,387	687,920	584,365	 548,364
Net income before capital grants and local contributions	(251,125)	(31,005)	4,762	(56,821)	12,886
Federal capital grants and local contributions	 124,497	81,002	86,395	202,235	 169,313
Increase in Net Position	(126,628)	49,997	91,157	145,414	182,199
Net Position, Beginning of Year (as previously reported)	3,463,506	3,413,509	3,322,352	3,176,938	3,181,074
Net Position, Beginning of Year (as restated)					 2,994,739
Net Position at End of Year	\$ 3,336,878	\$ 3,463,506	\$ 3,413,509	\$ 3,322,352	\$ 3,176,938

Table 13

#### REGIONAL TRANSPORTATION DISTRICT FIVE-YEAR SCHEDULE OF EXPENSES AND REVENUES - BUDGET AND ACTUAL - BUDGETARY BASIS (In Thousands)\*

FIVE-YEAR SCHEDULE OF EXPENSES AND REV	201		2018		2013	7	201	6	2015	i
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
Operating revenues:										
Passenger fares	\$ 163,600					\$ 140,217 \$		\$ 134,622		
Other	5,616	6,553	5,666	7,535	6,023	7,159	4,797	5,803	5,245	5,347
Total operating revenues	169,216	160,943	152,451	150,766	148,523	147,376	134,970	140,425	128,618	125,877
Operating expenses:										
Salaries, wages, fringe benefits	279,004	251,074	258,452	236,892	238,452	263,977	222,966	260,039	202,135	227,207
Materials and supplies	63,563	54,983	60,853	51,335	55,853	44,686	60,001	52,180	67,741	58,884
Services	139,262	96,085	148,405	81,189	154,405	77,323	139,385	58,560	139,607	79,749
Utilities	19,926	17,823	18,149	16,419	22,149	16,503	19,382	14,220	15,015	13,673
Insurance	14,151	10,833	11,485	9,941	8,485	13,319	7,665	10,382	7,595	8,102
Purchased transportation	211,016	203,559	187,209	176,416	174,209	159,051	175,696	156,605	114,214	113,216
Leases and rentals	3,090	3,204	3,712	1,996	3,712	2,829	3,557	3,288	3,415	3,462
Miscellaneous	7,204	5,053	12,102	4,317	14,432	4,213	9,601	4,183	5,824	4,531
Total Operating Expenses	737,216	642,614	700,367	578,505	671,697	581,901	638,253	559,457	555,546	508,824
Operating loss	(568,000)	(481,671)	(547,916)	(427,739)	(523,174)	(434,525)	(503,283)	(419,032)	(426,928)	(382,947)
Nonoperating revenue (expense):										
Sales and use tax	662,376	659,418	622,834	634,192	586,053	598,187	569,763	563,598	551,368	541,518
Grant operating assistance	92,013	86,263	102,681	86,403	103,785	80,412	96,767	77,335	78,832	73,383
Interest income	15,695	17,669	11,732	13,409	4,197	63,030	3,840	6,371	4,310	3,164
Other income	12,871	26,582	13,246	12,618	11,244	10,596	20,200	9,927	11,020	10,322
Gain/Loss on capital assets		(2,452)	-	(1,449)	-	4,022		5,664		1,085
Interest expense	(152,155)	(200,845)	(153,248)	(62,770)	(129,719)	(65,346)	(117,313)	(77,272)	(95,365)	(79,686)
Other expense/UnIrealized loss		(672)	-	(16)	<u> </u>	(2,981)	-	(1,258)	<u> </u>	(1,422)
Total nonoperating revenue	630,800	585,963	597,245	682,387	575,560	687,920	573,257	584,365	550,165	548,364
Proceeds from issuance of long-term debt	-	(96,071)	•	(5,805)	457,091	402,435	457,091	314,174	457,091	299,688
Capital outlay										
Capital expenses	693,520	350,221	849,538	335,080	1,055,839	451,245	1,396,223	693,159	1,687,076	870,055
Less capital grants	(266,591)	(124,497)	(311,134)	(81,002)	(418,898)	(86,395)	(258,089)	(202,235)	(206,451)	(169,313)
	426,929	225,724	538,404	254,078	636,941	364,850	1,138,134	490,924	1,480,625	700,742
Long-term debt principal payment	76,771	146,475	58,065	64,700	58,065	489,841	61,698	133,098	58,942	54,348
Excess (deficit) of revenue and nonoperating										
income over (under) expenses, capital outlay and	A (440.000)	(000.070)	(547.140)	(00.005)	* (105 500)	(100.001)	(070 707)		(050.000)	(000 005)
debt principal payments	\$ (440,900)	(363,978)	\$ (547,140)	(69,935)	\$ (185,529)	(198,861) \$	(672,767)	(144,515)	\$ (959,239)	(289,985)
Increases (decreases) to reconcile budget basis to GAAP basis										
Capital expenditures		350,221		335,080		451,245		693,159		870,055
Long-term debt proceeds		96,071		5,805		(402,435)		(314,174)		(299,688)
Long-term debt principal		146,475		64,700		489,841		133,098		54,348
Depreciation		(355,417)		(285,653)		(248,633)		(222,154)		(152,531)
Net Income	-	\$ (126,628)		\$ 49,997		\$ 91,157	-	\$ 145,414	\$	182,199
NGT HOUHG	=	Y (120,020)	_	, 10,00 <i>1</i>	:	y 01,107	=	y 170,414	\$	102,100

\* RTD's annual budget is prepared on the same basis as that used for accounting except that the budget also includes proceeds of long-term debt and capital grants as revenues, and expenditures include capital outlays and bond principal

#### REGIONAL TRANSPORTATION DISTRICT

#### FISCAL YEAR 2019 AND 2020 BUDGET SUMMARY (in thousands)

Table 15

		2019		2019	2020	
	Ado	pted Budget	Ame	ended Budget	Ado	pted Budget
Beginning net position	\$	3,721,818	\$	3,401,478	\$	3,900,904
Revenues:						
Operating		169,216		169,216		163,629
Sales & use taxes		668,330		662,376		664,743
Federal and local grants		370,885		358,604		310,340
Interest and other income		28,374		28,566		20,465
FasTracks - change in debt service reserve		(2,003)		(2,003)		-
FasTracks - change in FISA		(9,361)		(9,361)		(18,648)
Change in capital acquisition reserve		-		-		
Financing proceeds		-		-		
Contributed capital		159,067		130,228		116,790
Total Revenues		1,384,508		1,337,626		1,257,319
Expenditures:						
Operating		755,412		743,310		739,744
Interest expense		152,155		152,155		170,384
Debt payments		76,771		76,771		88,174
Current capital		111,373		92,624		39,680
Capital carryforward		719,372		<u>579,496</u>		<u>573,644</u>
Total expenditures		<u>1,815,083</u>		1,644,356		<u>1,611,626</u>
Adjustments <sup>1</sup>		1,049,776		1,201,314		612,315
Ending net position	<u>\$</u>	4,341,019	\$	4,296,062	\$	4,158,912
Net position summary:						
Net investment in capital assets	\$	3,979,655	\$	3,979,532	\$	3,823,912
Restricted debt service, project related and other <sup>2</sup>		119,701		114,701		114,932
Restricted TABOR fund		25,977		25,805		25,465
Restricted FasTracks <sup>3</sup>		85,787		85,787		104,435
Restricted Board appropriated and capital replacement fund <sup>4</sup>		56,310		55,558		57,312
Unrestricted fund		73,589		34,679		32,856
Ending net position	\$	4,341,019	\$	4,296,062	\$	4,158,912

<sup>1</sup> Adjustments reflect cash activity from the Statement of Net Position.

<sup>2</sup> Funds restricted by bond covenants, other contracts and policy guidelines.

<sup>3</sup> Appropriated funds which are available to fund future year expenditures for the FasTracks program.

<sup>4</sup> Board appropriated funds per policy guidelines and funds designated for capital replacement.

#### **REGIONAL TRANSPORTATION DISTRICT TRIP FARES**

					You	th Discount	
Trip Fares	F	ull Fare	Disc	ount Fare <sup>1</sup>	Fare <sup>2</sup>		
Single Trip Fares							
Mall Shuttle and Free Mall Ride		Free		Free		Free	
Local - Denver, Boulder, Longmont and light rail	\$	3.00	\$	1.50	\$	0.90	
Rail and bus regional		5.25		2.60		1.60	
Airport		10.50		5.25		3.20	
Multiple Trip Fares (10 Ride Ticket Book)							
Local - Denver, Boulder and Longmont and light rail	\$	28.00	\$	14.00	\$	9.00	
Rail and bus regional		40.50		25.25		16.00	
Multiple Trip Fares (Day Pass)							
Local - Denver, Boulder and Longmont and light rail	\$	6.00	\$	3.00	\$	1.80	
Rail and bus regional		10.50		5.25		3.20	
Airport		10.50		5.25		3.20	
Multiple Trip Fares (Monthly Pass)							
Local - Denver, Boulder and Longmont and light rail	\$	114.00	\$	57.00	\$	34.20	
Rail and bus regional, Airport		200.00		99.00		60.00	
Rail and bus regional, Airport							

 $^1$  Discount fares apply to seniors 65+, individuals with disabitlities, and Medicare recipients

<sup>2</sup> Youth discount fares apply to youth ages 6-19 (up to three children ages 5 and younger ride free with a fare-paying adult)

### REGIONAL TRANSPORTATION DISTRICT RTD NET TAXABLE RETAIL SALES (In Millions)

Year	Denver County	Boulder County	Jefferson County	Adams County <sup>1</sup>	Arapahoe County <sup>1</sup>	Douglas County <sup>1</sup>	Broomfield County <sup>1</sup>	Other	Total Taxable Transactions	Percent Annual Increase or Decrease
2010	\$ 9,766	\$ 3,391	\$ 5,656	\$ 4,433	\$ 6,817	\$ 2,390	\$ 935	\$718	\$ 34,106	5.6%
2011	11,239	3,721	6,001	4,749	7,486	2,778	944	1,041	37,959	11.3%
2012	12,415	3,851	6,202	5,323	8,109	2,912	991	1,036	40,839	7.6%
2013	12,861	4,033	6,538	5,731	8,456	3,108	1,004		41,731	2.2%
2014	14,254	4,359	7,013	6,436	9,211	3,318	1,045		45,636	9.4%
2015	14,629	4,547	7,505	6,932	9,887	3,575	1,077	1,399	49,551	8.6%
2016	15,251	4,798	7,718	7,301	10,144	3,786	1,055	1,359	51,412	3.8%
2017	16,125	4,924	7,986	8,117	10,481	4,036	1,144	1,886	54,699	6.4%
2018	16,777	5,148	8,585	9,031	10,840	4,191	1,225	1,181	56,978	4.2%
2019	17,901	5,821	9,222	9,542	11,809	4,572	1,409	203	60,479	6.1%

<sup>1</sup> Only a portion of each of these counties lies within the District

#### **APPENDIX B**

#### **DEFINITIONS OF TERMS**

Unless otherwise specified, capitalized terms used in this Official Statement will have the meanings set forth below:

"0.4% Sales Tax" or "0.4% Sales Tax Increase" means the additional four-tenths of one percent sales tax increase approved by a referendum of District voters at the 2004 Election.

"0.4% Sales Tax Revenues" means the revenues from the 0.4% Sales Tax.

"0.6% Bond Resolution" means the bond resolution, as amended from time to time, pursuant to which the District issued the 0.6% Senior Bonds.

"0.6% Sales Tax" means the 0.6% sales tax imposed by the District to help support its activities.

"0.6% Sales Tax Revenues" means the revenues from the 0.6% Sales Tax.

"0.6% Senior Bonds" are the sales tax revenue bonds secured by a first lien on the 0.6% Sales Tax Revenues previously issued by the District pursuant to a bond resolution.

"0.6% Senior Debt" means the 0.6% Senior Bonds together with the CP Notes.

*"2004 Election"* means the November 2, 2004 ballot referendum as described in *"PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion"* herein.

"Aberdeen" means Aberdeen Global Infrastructure Partners, LP.

"Acceptable Credit Rating" means, with respect to any person, the rating of its unsecured, senior long-term indebtedness (or, if such person has no such rating, then its issuer rating or corporate credit rating) is no lower than, at the time such Person executes, delivers or issues an Acceptable Letter of Credit or an Acceptable Surety Policy and at any time thereafter (a) with respect to an Acceptable Letter of Credit, 'A-', 'A3' or the equivalent rating from any Nationally Recognized Rating Agency or (b) with respect to an Acceptable Surety Policy, a rating in one of the two highest generic rating categories from at least two Nationally Recognized Rating Agencies.

"Acceptable LC Bank" means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

"Acceptable Letter of Credit" means an irrevocable standby letter of credit, which (a) is denominated in United States dollars and drawable and payable in the United States, (b) is without recourse to the Borrower, (c) is issued in favor of the Trustee by an Acceptable LC Bank, (d) is not secured by any Collateral, (e) has a term of at least one year from the date of issuance and shall contain a provision requiring notice from the issuer thereof to the Trustee if such Acceptable Letter of Credit will not be renewed in accordance with its terms (provided that, in the case of a letter of credit issued as a replacement for a letter of credit with less than one year remaining until its stated expiration date, the term of such replacement letter of credit shall end no earlier than the end of the term of the original letter of credit) and (f) allows the Trustee to make a draw thereunder (i) upon the presentation to the issuing bank of a certificate that conforms to the requirements set forth in such letter of credit stating that the Trustee is drawing funds thereunder pursuant to the relevant Financing Document, (ii) during the thirty (30) day period prior to expiry (unless replaced with an Acceptable Letter of credit has not been replaced within fifteen (15) Business Days of the Borrower's knowledge of such downgrade, and (iv) when funds would otherwise be drawn from the Debt Service Reserve Account. "Acceptable Replacement Party" means (a) with respect to the Design Build Contract or the O&M Contract, any Person that provides evidence satisfactory to the Company and the Technical Advisor (solely with respect to technical capability) that such third party is technically, and such third party or a parent guarantor that has guaranteed such third party's obligations under the applicable replacement contract is financially, capable of fulfilling all of the remaining obligations of the party it is replacing; or (b) (i) with respect to the counterparty to the Design Build Guaranty or the O&M Guaranty, (A) Fluor Corporation or Balfour Beatty plc, to the extent such party is not the party being replaced as Design Build Guarantor or O&M Guarantor or O&M Guarantor being replaced, provided that such affiliate has an equivalent or better credit quality to such Design Build Guarantor or O&M Guarantor, and (ii) with respect to the counterparty to the O&M Contract, (A) Fluor Corporation, or one of its affiliates, or (B) Balfour Beatty plc, or one of its affiliates, in each case of this clause (ii), to the extent such party or one of its affiliates is not the party being replaced as Design Build Guarantor or O&M Guarantor. For the avoidance of doubt, a Person may qualify as an Acceptable Replacement Party with respect to a Material Project Contract under either clause (a) or the appropriate sub-clause of clause (b) of this definition.

*"Acceptable Surety Policy"* means any surety policy or bond, however denominated, provided by a qualifying institution as described in the following sentence, pursuant to which the Trustee may draw on such Acceptable Surety Policy to enable the Debt Service Reserve Account to make a required transfer to the Debt Service Fund. Acceptable Surety Policies may only be acquired from a provider with an Acceptable Credit Rating.

#### "Account Agreement Permitted Investments" means:

(a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) Investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) Investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000, including the Trustee or any of its affiliates;

(d) Investment agreements, including guaranteed investment contracts, repurchase agreements, deposit agreements and forward delivery agreements that are obligations of an entity whose senior long term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated (at the time the investment is entered into), not lower than "A2" by Moody's or its equivalent from another Nationally Recognized Rating Agency, including the Trustee or any of its affiliates;

(e) Money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940 and (ii) are rated "AAA" by S&P and "Aaa" by Moody's, including any such fund to which the Trustee or any of its affiliates provides services as an investment advisor, custodian, subcustodian, investment manager, administrator and/or shareholder servicing agent, notwithstanding that (A) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (B) the Trustee collects fees for services rendered pursuant to the Indenture, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(f) Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, other deposit products, certificates of deposit, including those placed by a third party pursuant to an agreement between the Account Bank and the Borrower, or bankers acceptances of depository institutions, including Account Bank or any of its affiliates; and

(g) Investments in Subsidiaries.

"Account Bank" means The Bank of New York Mellon Trust Company, N.A., as Account Bank pursuant to the Lockbox Account Agreement.

*"Account Bank Representative"* means any officer of the Account Bank assigned to the corporate trust department or any other officer of the Account customarily performing functions similar to those performed by any such officer, with respect to matters relating to the administration of the Financing Documents to which the Account Bank is a party.

"Account Collateral" means the Indenture Account Collateral and the Lockbox Account Collateral.

"ACI" means Alternate Concepts, Inc.

"Accreted Redemption Price" means, with respect to any Original Issue Discount Bonds or Capital Appreciation Bonds, the Accreted Value of the Bonds to be redeemed, plus accrued and unpaid interest (if any) to, but not including, the redemption date.

"Accreted Value" means, with respect to (a) any Capital Appreciation Bond, as of any Calculation Date, the sum of the initial principal amount of such Bonds plus the principal accumulated, compounded and unpaid thereon to, but not including, such Calculation Date, and (b) any Original Issue Discount Bond, as of any Calculation Date, an amount equal to the initial public offering price of such Bond, plus the amount of discounted principal that has accreted thereon from its date of issuance to, but not including such Calculation Date at the rate on such Bond; provided, however, that if the Calculation Date for the determination of Accreted Value of any Capital Appreciation Bond or Original Issue Discount Bond is not an Interest Payment Date, the Accreted Value of such Bond will be calculated by straight line interpolation of Accreted Value as between the immediately preceding Interest Payment Date and the Accreted Value as of the Calculation Date. As used with respect to any Capital Appreciation Bond or Original Issue Discount Bond, including when used in connection with determining whether the owners of the requisite principal amount of the Bonds then outstanding have given any request, demand, authorization, direction, notice, consent or waiver, the term "principal" means the Accreted Value thereof, except as used in connection with the authorization and issuance of Bonds and with the order of priority of payments of Bonds after an Event of Default, in which case "principal" means the initial offering price of a Capital Appreciation Bond or Original Issue Discount Bond. "Additional Obligor" means any one of the following nominated in the "Step-In Notice" to become a joint and several obligor with the Company under the Concession Agreement and the Lenders' Direct Agreement delivered in accordance with the Lenders' Direct Agreement: (a) The Bank of New York Mellon Trust Company, N.A., as Agent Bank (as defined in the Concession Agreement) under the Lenders' Direct Agreement, a Lender or any of their respective Affiliates or (b) any Person approved by the District in its discretion, which approval may not be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Company has provided the District with the relevant information required under the Lenders' Direct Agreement with respect to such Person.

"Additional Parity Bonds" means the Additional Parity Bonds that may be issued pursuant to the Indenture and described in "SECURITY FOR THE BONDS—Indenture" herein.

*"Additional Parity Bonds Issuer Loan Agreement"* means, for each series of Additional Parity Bonds, the loan agreement to be executed by the Issuer and the Company in connection with the issuance of such Additional Parity Bonds pursuant to the Indenture, with such changes as are acceptable to the Company and the Issuer.

*"Additional Parity Bonds Loan"* means the loan to the Company by the Issuer pursuant to the Additional Parity Bonds Issuer Loan Agreement of the entire amount of the proceeds from any Additional Parity Bonds issued pursuant to the Indenture.

*"Additional Parity FasTracks Bonds"* means any FasTracks Bonds subsequently issued by the District on a parity with the Outstanding FasTracks Bonds.

"Additional Sales Tax" means any sales tax, other than the Sales Tax, which shall have been (a) levied or imposed by the State or by the District pursuant to state legislative authorization and in effect at the time of the incurrence by the District of any proposed additional Senior RTD Debt in accordance with the Concession Agreement, (b) received by the District or the RTD Trustee for at least 12 consecutive months immediately preceding the incurrence by the District of such proposed additional Senior RTD Debt, (c) levied or imposed in the District Sales Tax Area on substantially the same transactions or other incidents as the Sales Tax for a period expiring no sooner than the Expiry Date and (d) pledged at the District's sole discretion, as part of the security for the payment of Senior RTD Debt and included by the District as part of the RTD Pledged Revenues prior to the certification described in the Concession Agreement.

*"Additional TABOR Portion"* means, for each calendar year, the amount in dollars identified as "Additional TABOR Portion" in the Additional TABOR Portion Notice delivered by the Company to the District pursuant to the Concession Agreement and described in "PAYMENTS UNDER THE CONCESSION AGREEMENT—Overview of TABOR Portion and RTD Appropriation Obligations" herein.

"Additional TABOR Portion Notice" means a notice delivered by the Company to the District pursuant to the Concession Agreement and as described in "PAYMENTS UNDER THE CONCESSION AGREEMENT" herein.

"Adjustable Base Service Payment" means the amount determined by the formula set forth in the Concession Agreement.

"Affected Party" means:

(a) with respect to the Concession Agreement, the Party claiming that it, or anyone acting on its behalf, has been prevented from or delayed in performing any of its obligations under the Concession Agreement by a Force Majeure Event; or

(b) with respect to the O&M Contract, the Party prevented from or delayed in performing any of its obligations under the O&M Contract or the other Contract Documents because of a Force Majeure Event.

"Affected Portion" means any part of the Concessionaire-operated Components that is damaged or partially destroyed.

"Affiliate" of any Person means any entity which directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with that Person.

"Amortized Redemption Price" means, with respect to Bonds that are not Capital Appreciation Bonds or Original Issue Discount Bonds, the Amortized Value of the Bonds to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date.

"Amortized Value" means an amount equal to (a) the principal amount of the Bonds to be redeemed, multiplied by (b) the price of such Bonds expressed as a percentage, calculated based on the industry standard method of calculating bond prices assuming (i) the delivery date equal to the redemption date, (ii) the maturity date of such Bonds is the maturity date (taking into account any optional call provision) and (iii) the yield on such Bonds is equal to such Bond's original offering yield set forth within the official statement or the offering memorandum, as applicable.

*"Applicable Interest Sub-Account"* means the Series 2020 Interest Sub-Accounts and each other "interest account or sub-account" established in the Revenue Account by the Account Bank pursuant to the Lockbox Account Agreement in connection with the issuance of a series of Additional Parity Bonds under the Indenture.

"Applicable Principal Sub-Account" means the Series 2020 Principal Sub-Accounts and each other "principal account or sub-account" established in the Revenue Account by the Account Bank pursuant to the Lockbox Account Agreement in connection with the issuance of a series of Additional Parity Bonds under the Indenture.

#### "Applicable Requirements" means:

(a) with respect to the Concession Agreement, the requirements of any Law made or of any Permit issued by any Relevant Authority in each case to the extent that the same are applicable to the Company, the Work, the Concessionaire-operated Components or the Eagle P3 Project, including the Specified Requirements;

(b) with respect to the Design Build Contract, the requirements of any Law made or of any Permit issued by any Relevant Authority in each case to the extent that the same are applicable to the Design Build Contractor, the Work or the Project, including the Specified Requirements; or

(c) with respect to the O&M Contract, the requirements of any Law made or of any Permit issued by any Relevant Authority in each case to the extent that the same are applicable to the O&M Contractor, the Services or the Project, including the Specified Requirements.

"Applicable Standards" means those codes and standards listed in the Scope Document; provided, however, that if any portion of such codes and standards conflicts with or is less stringent than Applicable Requirements or other requirements in the Contract Documents, such conflicting or less stringent portions of such standards shall not be deemed "applicable."

*"Applicable Termination Amount"* means the Concessionaire Default Amount, RTD Default Amount or the FM Termination Amount, as applicable.

"Appropriation Deficiency" means any Fiscal Year for which adequate funds to meet any RTD Appropriation Obligations have not been included in such Fiscal Year's RTD Adopted Budget as described in "ACCOUNTS AND FLOW OF FUNDS—Additional Conditions and Requirements with Respect to Flow of Funds."

"ASI" means Aberdeen Standard Investments.

"Assigned Agreements" means all agreements and contracts (other than all contracts and other agreements of the Company relating to the sale or other disposition of all or any part of the Inventory, Equipment or Documents and all rights, warranties, claims and benefits of the Company against any Person arising out of, relating to or in connection with all or any part of the Inventory, Equipment or Documents of the Company, including any such rights, warranties, claims or benefits against any Person storing or transporting any such Inventory or Equipment or issuing any such Documents), in each case, to which the Company is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time), including (a) all contracts and agreements related to the Project to which the Company is a party or of which it is a beneficiary and (b) each and every bond, indemnity, warranty, guaranty and other similar document relating to the performance by any party (other than the Company).

"Authorized Denomination" means denominations of \$5,000 principal amount and integral multiples thereof.

"Availability" means train and station availability and on-time performance as defined in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" herein.

*"Availability Adjusted Base Annual Service Payment"* means the product of the amount of the Base Annual Service Payment and the Availability Factor.

"Availability Factor" is used to calculate the Availability Adjusted Base Annual Service Payment as defined in "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion as Subordinate Lien Sales Tax Obligation."

*"Availability Ratio"* means the "Availability Ratio (AR<sub>mn</sub>)" as determined in accordance with provisions of the Concession Agreement related to determining Service Payments and as described in "PAYMENTS UNDER THE CONCESSION AGREEMENT—Calculation of Service Payments" herein.

"Balfour Beatty, LLC" means Balfour Beatty, LLC, a Delaware limited liability company.

"Balfour Beatty plc" means Balfour Beatty plc, a public limited company organized under the laws of England.

# *"Bankruptcy Event"* means:

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or of a substantial part of the assets of the Company under any insolvency law or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Company or a substantial part of the Company's assets and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Company or for a substantial part of the Company's assets, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), and, in any case referred to in the foregoing subclauses (i) through (v), such action has not been cured within twenty (20) days thereafter.

*"Base Annual Service Payment"* means, for each year during the Operating Period, the "Base Annual Service Payment (BASP<sub>n</sub>)," expressed in Base Rate Dollars as determined in accordance with the Concession Agreement, as described in "PAYMENTS UNDER THE CONCESSION AGREEMENT—Calculation of Service Payments" herein.

*"Base Case Equity IRR"* means the nominal post-tax Equity IRR (i.e. post-tax with respect to the Company and pre-tax with respect to its Shareholders or other beneficial owners) set out in the Financial Model as at Financial Close (as updated from time to time to reflect any sharing of reductions in cost in accordance with the Concession Agreement) and calculated over the period from Financial Close to the Expiry Date.

"Base Rate Dollar" means the value of Dollars calculated in accordance with the Concession Agreement.

"BBRI" means Balfour Beatty Infrastructure Inc (f/k/a Balfour Beatty Rail, Inc.).

"Beneficial Owners" means purchasers of beneficial interests in the Series 2020 Bonds.

"Bid Insurance Cost" means U.S.\$4,701,694.

"Board" means the Board of Directors of the District.

*"Bond Counsel"* means Butler Snow LLP, or other firm of attorneys, who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal and State income tax purposes.

*"Bond Obligations"* means all obligations of the Company under the Series 2020 Issuer Loan Agreement, any Additional Parity Bonds Issuer Loan Agreements (if executed) and the other Financing Documents.

*"Bond Purchase Agreement"* means that certain Bond Purchase Agreement to be entered into among the Underwriters, the District and the Company.

"Bond Resolution" means the resolution of the Issuer adopted on November 17, 2020, authorizing the issuance of the Series 2020 Bonds.

"Bonds" means the Series 2020A Bonds and the Series 2020B Bonds together with any Additional Parity Bonds issued from time to time pursuant to the Indenture.

## "Bond Year" means:

(a) for purposes of the Financing Documents, with respect to any series of Bonds, each one-year period ending on the anniversary of the date of delivery of such Bonds or such other period as may be elected by the Issuer in accordance with Treasury Regulations and notice of which election has been given to the Trustee; or

(b) the 12 months commencing on the second day of November of any calendar year and ending on the first day of November of the next succeeding calendar year.

"Borrower" means the Company in its capacity as Borrower under the Loan Agreement.

"Borrower Change in Law Contingency Account" means the Borrower Change in Law Contingency Account created by and designated as such in the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement— Borrower Change in Law Contingency Account" herein.

*"Borrower's Free Cash Flow"* means, with respect of any period, the following amounts, each calculated on an actual or projected basis, as applicable: all Project Revenues received or projected to be received, as applicable, by the Company plus any amounts on deposit or projected to be on deposit, as applicable, in the Renewal Works Reserve Account less all O&M Expenditures, including Rolling Stock Expenditures, paid or projected to be paid, as applicable, by the Company during such period.

"Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the United States government or the State are authorized to be closed or on which commercial banks in New York, New York, Washington, D.C., or the city and state in which the Trustee is located are authorized or required by law, regulation or executive order to be closed (unless otherwise provided in a Supplemental Indenture).

"Calculation Date" means each April 15, July 15, October 15 and January 15 of each calendar year.

"*Capital Appreciation Bonds*" means the Additional Parity Bonds designated Capital Appreciation Bonds in the Supplemental Indenture providing for the issuance of such Additional Parity Bonds and on which interest is compounded and paid at maturity or at redemption.

"Car" means a car forming part of the Rolling Stock.

"Car Structure" means the requirements for carbody structure as set forth in the Rolling Stock Supply Contract.

"Casualty Event" means the damage or destruction of any part of the Concessionaire-operated Components in respect of which the Design Build Contractor, O&M Contractor or the District, as the case may be, is obligated to maintain insurance pursuant to the Design Build Contract, the O&M Contract and/or the Concession Agreement, prior to the date care, custody and control of such Concessionaire-operated Components has passed to the Company in accordance with the terms of the Design Build Contract and the O&M Contract, as applicable.

"Change" means a change or variation required or proposed in accordance with the Concession Agreement, and may include additions, amendments or reductions to the scope of the Eagle P3 Project and includes any work carried out in connection with and as a result of any Concessionaire Proposed Change or RTD Proposed Change as described in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement—Changes."

"Change in Law" means the introduction or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any Law or standards, practices or guidelines issued or published by any Relevant Authority that are either binding on the Company, or if nonbinding on the Company, are both typically complied with in the operation and maintenance and/or railroad industries and are necessary in order to comply with Good Industry Practice, that occurs on or after the Final Proposal Due Date; provided that the coming into effect or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of any Law or standards, practices or guidelines issued or published by any Relevant Authority that have been enacted and published as of the Final Proposal Due Date but have not come into effect by such date, shall not constitute a Change in Law.

"Change in Law Change" means a Change in Law that constitutes a Discriminatory Change in Law or has a Change in Law Effect.

"Change in Law Effect" means a Change in Law that will result in an increase in costs of performing the Company's obligations under the Concession Agreement with respect to the Concessionaire-operated Components during the Operating Period and/or will have an adverse effect on the financial position of the Company as established in the Financial Model immediately prior to the occurrence of such Change in Law, taking into account certain factors set out in the Concession Agreement.

"*Change of Control*" for purposes of the Financing Documents shall be deemed to have occurred if a prohibited issuance or share transfer under the Concession Agreement shall have occurred and the District has not waived compliance with the requirements therein.

"Claims" means claims, demands, actions, proceedings or liabilities.

"Closing Date" means the date the Series 2020 Bonds are issued, authenticated and delivered in accordance with the Indenture.

"Co-Account Bank" means the co-Account Bank appointed by the Account Bank and Company (with written notice to the Trustee) with respect to all or any portion of the Lockbox Account Collateral, in any case with such powers, rights, duties, obligations and immunities conferred upon the Account Bank under the Lockbox Account Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Collateral" means all of the Company's right, title and interest, whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in and to the following property:

(a) all accounts, chattel paper, deposit accounts, documents, general intangibles, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, and other minerals;

(b) its rights, title and interest in, to and under the Concession Agreement;

- (c) all Account Collateral;
- (d) all Secured Accounts;

(e) all Instruments and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any Instruments;

- (f) all Inventory;
- (g) all Equipment;
- (h) all Documents;

(i) to the extent permitted thereby and not described above, all general intangibles, including all contracts and other agreements of the Company relating to the sale or other disposition of all or any part of the Inventory, Equipment or Documents and all rights, warranties, claims and benefits of the Company against any Person arising out of, relating to or in connection with all or any part of the Inventory, Equipment or Documents of the Company, including any such rights, warranties, claims or benefits against any Person storing or transporting any such Inventory or Equipment or issuing any such Documents;

(j) to the maximum extent assignable (including by operation of Sections 9-406 or 9-408 of the UCC, or otherwise), all "Assigned Agreements" (provided that any such agreement, contract or document which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned under the Security Agreement or if a security interest in the Assigned Agreements was granted under the Security Agreement is expressly excepted and excluded from the Security Interest and terms of the Security Agreement to the extent necessary so as to avoid such voidness, avoidability, terminability or revocability); including: (i) all rights of the Company to receive moneys due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of the Company to receive proceeds of any insurance, bond, indemnity, warranty or guaranty with respect to the Assigned Agreements and (iv) all rights of the Company to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform under the Assigned Agreements; and to compel performance and otherwise to exercise all remedies under the Assigned Agreements;

(k) all accounts of the Company not constituting Secured Accounts, including, to the extent related to all or any part of the other Collateral;

(l) all other tangible and intangible property and fixtures of the Company, including all intellectual property;

(m) to the maximum extent assignable (including by operation of Sections 9-406 et seq. of the UCC or otherwise) all Governmental Approvals held as of the date of the Security Agreement or thereafter in the name, or for the benefit, of the Company (provided that any Governmental Approval by its terms or by operation of law, would become void, voidable, terminable or revocable if mortgaged, pledged or assigned under the Security Agreement or if a security interest in such Governmental Approvals granted under the Security Agreement is expressly excepted and excluded from the Security Interest and terms of the Security Agreement to the extent necessary so as to avoid such voidness, avoidability, terminability or revocability);

(n) all commercial tort claims arising out of the events described in the Security Agreement, if any (as it may be supplemented from time to time);

(o) all proceeds of Insurance; and

(p) all proceeds, rents, profits, income, benefits, substitutions and replacements of and to any of the property of the Company described in the preceding clauses of this definition (including all causes of action, claims and warranties held by the Company as of the date of the Security Agreement or thereafter in respect of any of the items listed above) and, to the extent related to any property described in such clauses or such proceeds, all books, correspondence, credit files, records, invoices and other documents, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of the Company or any computer bureau or service company from time to time acting for the Company.

"*Commercial Paper Notes*" means any Securities that (a) have a stated maturity date that is not more than 270 days after the date of issuance thereof and (b) are designated as Commercial Paper Notes in the resolution authorizing their issuance, but does not include any Credit Facility Obligations relating to such Securities.

*"Commuter Rail Maintenance Facility" or "CRMF"* means the commuter rail maintenance facility situated on the CRMF Site as described in the Concession Agreement.

"Commuter Rail Network" means the Commuter Rail Projects, the CRMF, the Existing Facilities and the DUS Rail Segment, and including, in each case, subject to the Concession Agreement, the Site.

"Commuter Rail Projects" means the East Corridor Project, the Gold Line Project and the Northwest Rail Electrified Segment Project.

"Commuter Rail Service" means the East Corridor Service, the Gold Line Service and the Northwest Rail Electrified Segment Service.

"Company" means Denver Transit Partners, LLC, a Delaware limited liability company.

"Company Representative" means (a) the chief executive officer of the Company; or (b) any other individual (or individuals) so designated by the Company to act as Company Representative under any Financing Document.

"Concession Agreement" means the Concession and Lease Agreement, dated July 9, 2010, as amended on July 22, 2010, and August 12, 2010, and as further amended, supplemented or otherwise modified from time to time, between the Company and the District, and all attachments, exhibits and schedules thereto, as supplemented or further amended from time to time.

"Concessionaire" means the Company in its capacity as party to the Concession Agreement.

*"Concessionaire Default Amount"* means the amount calculated during the Operating Period in accordance with the formula set forth in the Concession Agreement for determining the Applicable Termination Amount in the event of a Company Termination Event, as described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT" herein.

"Concessionaire Design Submittals" means drawings, designs, specifications, calculations, reports, plans, procedures and other items and other information to be submitted in connection with the design of the Commuter Rail Projects and/or the Rolling Stock, including final design submittals, in accordance with the Concession Agreement, the Contract Data Requirements List and the Third Party Agreements.

"Concessionaire-operated Components" mean the Commuter Rail Network and the Rolling Stock.

"Concessionaire-operated Expansion" means any Other RTD Project operated and maintained by the Company, to the extent such project constitutes a rail line connected to, or fixtures, facilities or infrastructure incorporated into, the Commuter Rail Network, as an additional element of the Eagle P3 Project.

# "Concessionaire Proposed Change" means:

(a) with respect to the Concession Agreement, suggestions by the Company at any time during the Operating Period for any variation to the O&M Specifications which in its opinion would reduce the cost of maintaining or operating the Commuter Rail Network, improve the efficiency or value to the District of the completed Commuter Rail Network, enable the Company to better manage the risks assumed by the Company under the Concession Agreement in respect of the Commuter Rail Network, or otherwise be of benefit to the District;

(b) with respect to the O&M Contract, any Modification initiated by the Company.

"Concessionaire's Proposal" means the final proposal that was delivered by the Company to the District in response to the RFP and attached to the Concession Agreement.

"Concessionaire's Punch List" means, with respect to each Commuter Rail Project, an itemized list of Work prepared (and periodically revised) by the Company (which list shall include all items of Work specified in a schedule to the Revenue Service Commencement Certificate applicable to such Commuter Rail Project or as otherwise specified by the District or the Independent Engineer pursuant to the Concession Agreement) and submitted to Design Build Contractor, setting forth the items of Work which remain to be completed with respect to such Commuter Rail Project after the Revenue Service Commencement Date for such Commuter Rail Project has been achieved and before the Final Completion Date for such Commuter Rail Project has been achieved, which Work is of a minor nature which does not affect beneficial occupation or safe use of the Commuter Rail Network or part thereof by the Company or members of the public and, where agreed with the District, any other Work in connection with or related to a Commuter Rail Project and associated Commuter Rail Service.

*"Concessionaire Termination Event"* means, subject to the Concession Agreement and described in APPENDIX C—*"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT,"* among other things, any of the events listed or described below:

(a) an involuntary proceeding is commenced or an involuntary petition is filed seeking (i) liquidation, reorganization or other relief in respect of any of the Company, the Shareholders or the O&M Contractor, or any of their debts, or of a substantial part of their assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law in effect as of the date of the Concession Agreement or thereafter or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of the Company, the Shareholders or the O&M Contractor, or for a substantial part of a substantial part of any of their assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered; *provided* that no such Concessionaire Termination Event shall have occurred: (x) in the case of insolvency of a Shareholder, where such insolvent Shareholder has transferred its ownership in the Company and its equity funding obligations to any other existing solvent Shareholder no later than sixty (60) days following such insolvency; and (y) in the case of insolvency of any Project Contractor, the Company has entered into a replacement O&M Contract with a reputable counterparty reasonably acceptable to the District no later than sixty (60) days following the date of termination of the O&M Contract;

(b) any of the Company, the Shareholders, the Rolling Stock Supplier or the O&M Contractor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law in effect as of the date of the Concession Agreement or thereafter, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (a) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for itself or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing; *provided* that no such Concessionaire Termination Event shall have occurred: (A) in the case of insolvency of a Shareholder, where such insolvent Shareholder has transferred its ownership in the Company to any other existing solvent Shareholder no later than sixty (60) days following such insolvency; and (B) in the case of insolvency of any Project Contractor, the Company has entered into a replacement O&M Contract, or, as the case may be, the Design Build Contractor has entered into a replacement Rolling Stock Supply Contract, in either such case, with a reputable counterparty reasonably acceptable to the District no later than sixty (60) days following the date of termination of the O&M Contract or the Rolling Stock Supply Contract (as applicable);

(c) the operation of the Concessionaire-operated Components by the Company in a manner violating the Applicable Requirements or the Concession Agreement and endangering the safety of Passengers following a written notice from the District outlining such safety concerns;

(d) any failure by the Company to obtain and maintain sufficient committed funding for the Eagle P3 Project in the event there are any material cost overruns for which the Company is required to secure funding, which failure to obtain and maintain sufficient committed funding would, with the passage of time, reasonably be expected to result in a Concessionaire Termination Event (other than under the Concession Agreement), which failure has not been remedied by the Company within a period of ninety (90) days following its occurrence;

(e) the Rolling Stock Supply Contract and/or the O&M Contract is terminated during the Operating Period and the Company has not entered into a replacement O&M Contract, or, as the case may be, the Design Build Contractor has not entered into a replacement Rolling Stock Supply Contract, in any such case, with a reputable counterparty reasonably acceptable to the District within ninety (90) days following the date of termination of the O&M Contract and/or within sixty (60) days following the termination of the Rolling Stock Supply Contract (as applicable);

(f) the Company sells, transfers, leases or otherwise disposes of all or any part (which has a material adverse effect in the Company's ability to carry out its obligations under the Concession Agreement) of its undertakings, properties or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time and other than in respect of the grant of security pursuant to the Concession Agreement without the prior consent of the District (such consent not to be unreasonably withheld or delayed);

(g) the Company fails to provide the Handover Security required by the time specified in the Concession Agreement and the District is unable to cover the amount of the Handover Security by deductions from the Service Payment transferred into a handover escrow account as set out in the Concession Agreement;

(h) the non-compliance with any share transfer restrictions or any change in control limitation as contemplated by the Concession Agreement;

(i) the Company fails to comply in any material respect with any Specified Requirement or any Applicable Requirement;

(j) the Company fails to comply with any material requirement of the provisions of the Concession Agreement relating to insurance;

(k) any of the representations or warranties referred to in the Concession Agreement prove to have been materially untrue or incorrect when made to the extent that such breach of representation or warranty has a material adverse effect on the Eagle P3 Project as a whole or the interests of the District;

(l) any breach by the Company of its obligations under the Concession Agreement;

(m) any material breach by the Company of its obligations in respect of subcontracting, including the Specified Requirements relating to disadvantaged and small business enterprises programs;

(n) any of the Project Agreements other than the Concession Agreement:

(i) ceases to be in full force and effect or no longer constitutes the valid, binding and enforceable obligations of the Parties thereto other than the District (other than due to the termination of such Project Agreement, or an involuntary bankruptcy event or a voluntary bankruptcy event, in each case as defined in such Project Agreement, which shall be governed by provisions the Concession Agreement described in clause (a) and clause (b) above; or

(ii) is materially amended, varied or departed from (other than in accordance with the Concession Agreement),

and in either case of clause (i) or (ii) above, this materially adversely affects the ability of the Company to perform its obligations under the Concession Agreement, or any right of the District under the Concession Agreement or its ability to enforce any such right, or to perform its obligations under the Concession Agreement;

(o) the Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Rail Electrified Segment Service as a single Commuter Rail Service) is 85% in six or more months of any eight-month period; *provided* that a single, continuous event lasting no more than thirty (30) days extends across two calendar months and directly causing the Availability Ratio in both such months to fall below 80% or 85%, as applicable, shall be deemed to have resulted in an Availability Ratio less than 80% or 85%, as applicable, in the first such month only;

(p) the Performance Deduction Percentage exceeds 3% of the Adjustable Base Service Payment for the relevant month in six or more months of any eight-month period; and

(q) without limitation to clauses (a) to (p) above, any breach of any other material obligations of the Company under the Concession Agreement (but only to the extent such breach (i) is not the subject of Performance Deductions, (ii) has not resulted in any impact on the Availability Ratio and (iii) is not otherwise the subject of penalties or deductions under the Concession Agreement) or any written repudiation of the Concession Agreement by the Company.

"Concession Equipment" means all equipment and software used in or forming part of the Concessionaireoperated Components, including:

(a) all equipment and software set out in the asset registers in accordance with the Concession Agreement;

(b) all equipment (including test equipment) and tools used in the operation and maintenance of the Concessionaire-operated Components;

(c) all cables, expendable parts, spare parts and materials; and

(d) all Contract Data produced in connection with the design, construction, operation and/or maintenance of the Concessionaire-operated Components.

"Construction Payments" has the meaning set forth in the Concession Agreement.

*"Consumer Price Index"* or *"CPI"* means CPI-U, US City Average, All Items Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics of the United States Department of Labor, or if publication of such index by the Bureau of Labor Statistics is discontinued, an index with similar characteristics specified as a replacement to CPI by the Financial Panel and the Technical Panel (acting jointly) as described in the Concession Agreement.

*"Continuing Disclosure Undertaking"* means that certain Continuing Disclosure Undertaking to be entered into among Dissemination Agent, the Company and the District pursuant to the Rule.

"Contract Data" means:

(a) with respect to the Concession Agreement, all of the Concessionaire Design Submittals, any drawings not included in the foregoing, the O&M Submittals and other Work Products to be prepared by the Concessionaire pursuant to the Concession Agreement and submitted to the District and any Project Third Party, as the case may be, in accordance with the Contract Data Requirements List;

(b) with respect to the Design Build Contract, all of the Contractor Design Submittals, any drawings not included in the foregoing, and other Work Products to be prepared by the Design Build Contractor pursuant to the Design Build Contract and submitted to the District and any Project Third Party, as the case may be, in accordance with the Contract Data Requirements List; or

(c) with respect to the O&M Contract, all of the O&M Submittals and other Work Products to be prepared by the O&M Contractor pursuant to the O&M Contract and submitted to the District and any Project Third Party, as the case may be, in accordance with the Contract Data Requirements List.

"Contract Data Requirements List" or "CDRL" means the requirements for the submission of the Contract Data and provisions relating to procedures and time periods for the review and agreement of Contract Data by the District and the Project Third Parties set out in the Concession Agreement, as modified from time to time between the Company and the District in accordance with the Concession Agreement.

"Contract Documents" means:

(a) with respect to the Concession Agreement, collectively, the Concession Agreement; each alternative technical concept previously approved by the District in accordance with the RFP and subsequently incorporated in the Concessionaire's Proposal; the attachments to the Concession Agreement, other than the Concessionaire's Proposal (but excluding portions relating to alternative technical concepts which are separately and directly incorporated into the Concession Agreement or any other attachment to the Concession Agreement) and any Third Party Agreement (but excluding such portions which are separately and directly incorporated in the Concession Agreement); the Third Party Agreements (other than such portions which are separately and directly incorporated in the Concession Agreement); the Concession Agreement or any other attachment to the Concession Agreement by way of attachment; and the Concessionaire's Proposal (excluding portions relating to alternative technical concepts which are separately and directly incorporated into the Concession Agreement by way of attachment; and the Concessionaire's Proposal (excluding portions relating to alternative technical concepts which are separately and directly incorporated into the Concession Agreement by way of attachment; and the Concessionaire's Proposal (excluding portions relating to alternative technical concepts which are separately and directly incorporated into the Concession Agreement by way of attachment; and the Concessionaire's Proposal (excluding portions relating to alternative technical concepts which are separately and directly incorporated into the Concession Agreement or any other attachment; and the Concessionaire's Proposal (excluding portions relating to alternative technical concepts which

(b) with respect to the Design Build Contract, collectively, the Design Build Contract, the Concession Agreement, the Design Documents, all Scope Change Orders, the requirements with respect to project and construction management set forth in the Concession Agreement, the Hazardous and Contaminated Substance Health and Safety Plan, the Voluntary Clean-Up Application and Materials Management Plan, the Quality Management Plan, the Project Management Plan, the Hazardous Materials Management Plan, the Sustainability Plan, the Safety and Security Management Plan, the Traffic Management Plan, the EMC Control Plan, the Corrosion Control Plan and the Construction Mitigation Plan, and all other requirements, plans and procedures that are to be prepared and/or complied with by the Company under the Scope Document pursuant to the Design Build Contract;

(c) with respect to the O&M Contract, collectively, the O&M Contract, the Concession Agreement, the Third Party Agreements, and all O&M Submittals.

"Contractor" means, with respect to the Interface Agreement, either the O&M Contractor or the Design Build Contractor, as the case may be.

"*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and "*Controlling*" and "*Controlled by*" have meanings correlative thereto.

"Cost of Issuance" includes the following:

(a) Expenses necessary or incident to determining the feasibility or practicability of the issuance and sale of the Bonds, the fees and expenses of management consultants for making studies, surveys and estimates of costs and revenues and other estimates;

(b) Expenses of administration, supervision and inspection properly chargeable to the issuance and sale of the Bonds, legal expenses and fees of the Issuer or the Company in connection with the issuance and sale of the Bonds, legal expenses and fees, fees and expenses of the Trustee, fees and expenses of financial advisors or brokers in arranging for the sale or placement of the Bonds, financing charges, remarketing fees, bond insurance premiums, cost of audits, cost of preparing, issuing and selling the Bonds, abstracts and reports on titles to real estate, title insurance premiums, recording fees and taxes and all other items of expense, including those of the District or the Company not elsewhere specified in the Indenture incident to the issuance and sale of the Bonds;

(c) Any other cost relating to the issuance and sale of the Bonds; and

(d) Reimbursement to the Company for any costs described above paid by it, whether before or after the execution of the Indenture or any Supplemental Indenture.

"Cost of Issuance Fund" means the Cost of Issuance Fund created by and designated as such in Section 5.1 of the Indenture.

"CP Notes" mean the Subordinate Lien Sales Tax Revenue Commercial Paper Notes, Series 2001A issued by the District.

"Credit Facility" means any letter or line of credit, policy of bond insurance, surety bond or guarantee or similar instrument (other than a Reserve Fund Insurance Policy (as defined in the Concession Agreement)) issued by a financial, insurance or other institution and which specifically provides security and/or liquidity in respect of Securities payable from all or a portion of the RTD Sales Tax Revenues.

"Credit Facility Obligations" means repayment or other obligations incurred by the District in respect of draws or other payments or disbursements made under a Credit Facility.

"CRMF Site" means the land, spaces and surfaces of the CRMF as described in the Concession Agreement, as modified or supplemented in accordance with the Concession Agreement.

"Cure Period" means the period ending 150 days after:

(a) where the District receives a Lender Notice, the date of receipt of that Lender Notice by the District;

or

(b) otherwise, the later of:

of:

(i) receipt by the Agent of an RTD Notice; and

(ii) the expiry of any applicable cure period for a Concessionaire Termination Event set out in Section 41.2 (Consequences of a Concessionaire Termination Event) of the Concession Agreement,

provided that, notwithstanding subclauses (a) and (b) above:

(A) if the Agent is prohibited by any court order or bankruptcy or insolvency proceedings from curing the unperformed obligations of the Company which are the subject of the RTD Notice or Lender Notice, as the case may be, or from commencing or prosecuting foreclosure proceedings, the Cure Period shall be extended by the period of such prohibition; and

(B) further notwithstanding proviso (A) above, the Cure Period shall end on the earlier

(I) any Step-in Date or Substitution Effective Date; and

(II) the End Date under the Concession Agreement.

"Debt Service Fund" means the Debt Service Fund established and created pursuant to the Indenture as described in "SECURITY FOR THE BONDS—Indenture—Funds and Accounts to be Established Under the Indenture" herein.

"Debt Service Payment Date" means each date on which principal of and interest on the Bonds is due and includes, but is not limited to, the maturity date of any Bond, each Interest Payment Date and the date of any mandatory redemption payment on any Bond.

"Debt Service Reserve Account" means the Debt Service Reserve Account established and created pursuant to the Indenture and as described in "SECURITY FOR THE BONDS—Indenture" herein.

*"Debt Service Reserve Requirement"* means the projected amount of principal and interest on the Bonds, in each case, payable during the six (6) month period commencing on the Closing Date and, thereafter on each Transfer Date, an amount equal to the projected amount of principal and interest on the Bonds, in each case, payable during the six (6) month period commencing on such Transfer Date as certified by the Company in the applicable Revenue Account Transfer Certificate.

*"Defeasance Escrow Account"* means the Defeasance Escrow Account created pursuant to the Indenture, as described in APPENDIX G—"SUMMARY OF CERTAIN PROVISIONS IN THE INDENTURE" herein.

"Defeasance Securities" means, to the extent permitted by law: (a) cash, (b) non-callable direct obligations of the United States of America ("Treasuries"), (c) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (d) pre-refunded municipal obligations rated the same as direct obligations of the United States of America by S&P and Moody's, respectively, or (e) any combination thereof used to effect defeasance of the Bonds.

"Demand for Arbitration" means the service of demand for arbitration, which specifies the nature of the controversy and the nature and extent of damages sought.

"Denver FasTracks Plan" means the FasTracks Plan.

"Denver Union Station" or "DUS" means the station known as "Denver Union Station," which serves as a transportation hub for light rail, bus and commuter rail services under the FasTracks Plan.

"Design Build Contract" means the turnkey, lump-sum, fixed price design build contract for the delivery of all the Work, dated July 9, 2010, as amended on July 22, 2010, and as further amended, supplemented or otherwise modified from time to time, between the Company and the Design Build Contractor.

"Design Build Contractor" means Denver Transit Systems, LLC, a Delaware limited liability company and its successors, assigns and replacements under the Design Build Contract.

"Design Build Contractor Direct Agreement" means the Direct Agreement entered into among the Trustee, the Design Build Contractor and the Company.

"Design Build Guarantors" means Fluor Corporation, Balfour Beatty, LLC and Balfour Beatty plc.

*"Design Build Guaranty"* means the guarantees executed and delivered by the Design Build Guarantors in favor of the Borrower substantially in the form of Exhibit L-1 or Exhibit L-2 of the Design Build Contract.

"Design Build Period" means the period ending on the date immediately preceding the last Final Completion Date.

"Design Build Subcontractor" means Denver Transit Constructors, LLC, a Delaware limited liability company, or any permitted replacement thereof or successor thereto.

"Design, Construction and Rolling Stock Requirements" means the mandatory requirements and provisions set out in Article 7 of the Concession Agreement, which defines the technical scope of the Work for the Eagle P3 Project during the Design Build Period, subject to any waivers and variations from specific requirements that the District may grant in its sole discretion. "Design Documents" means all plans, drawings, designs, specifications, reports, specifications and other such design-related information for the Project, including, but not limited to, design standards, design or durability reports, models, samples and calculations, including all Concessionaire Design Submittals.

"Designated Credit Agreement" means any agreement (excluding any agreement for the provision of Shareholder Loans or with any Equity Bridge Lenders but including Subordinated Debt) executed by the Company and any Lender under or pursuant to which any financing is or is to be provided to the Company in relation to the Eagle P3 Project (whether by means of loans, issuance of bonds or other debt instruments, the provision of letters of credit, financial insurance, guarantees, leasehold mortgages or any other means) and any hedging agreements and, in each case, any security agreements in connection therewith, in each case which is verified in writing by the District as a Designated Credit Agreement in accordance with the Concession Agreement and is described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT" herein.

"Designated Payment Office of the Trustee" means the Corporate Trust Office of The Bank of New York Mellon Trust Company, N.A., whose office is located at 111 Sanders Creek Parkway, East Syracuse, New York 13057.

"Designated Senior Representative" means, in the case of the District, the General Manager, and in the case of the Company, the chief executive officer (or equivalent) of the Company.

"Direct Agreements" means the Lenders' Direct Agreement, the Design Build Contractor Direct Agreement and the O&M Contractor Direct Agreement.

"Disbursement Agent" means the Senior RTD Debt Trustee, in its capacity as disbursement agent with respect to the required payments of the TABOR Portion and any Additional TABOR Portion under the Concession Agreement.

## "Discriminatory Change in Law" means:

(a) a Change in Law, the terms of which apply to:

(i) the Eagle P3 Project and either (A) do not apply to other similar private sector surface transportation infrastructure projects in the United States of America or (B) are not of general application;

(ii) (A) with respect to the Concession Agreement, the Company or any applicable Project Contractor; (B) with respect to the Design Build Contract, the Company, the Design Build Contractor or the Rolling Stock Supplier; or (C) with respect to the O&M Contract, the Company or the O&M Contractor, and, in each case, do not apply to other Persons; and/or

(iii) private sector commuter rail operators or private sector commuter rail construction contractors in the State of Colorado and do not apply to other Persons;

(b) a determination by the United States Railroad Retirement Board, an independent agency in the executive branch of the United States federal government, or the Surface Transportation Board, an agency of the United States Department of Transportation, that any employee of the Company or the O&M Contractor (other than any Dispatchers) constitutes an "employee" for purposes of either the Railroad Retirement Tax Act, 45 U.S.C. §231 et seq. or the Railroad Unemployment Insurance Act, 45 U.S.C. §351 et seq. (including (i) each such Law as it may be amended, modified or supplemented from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to each such Law, (iii) the successor to each Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter); *provided* that the Company has complied with the O&M Specifications; and

(c) any amendments, alterations, modifications, additions or replacements to or of the Railroad Safety Improvement Act of 2008 with respect to the provisions set forth at 49 USC 20157 and in regulations promulgated thereunder in Positive Train Control Systems, 75 Fed. Reg. 2598 (Jan. 15, 2010) (to be codified at 49 C.F.R. Parts 229, 234, 235 and 236), compliance with which results in additional costs with respect to the implementation of positive train control systems.

"Dispatcher" means any individual whose employment responsibilities include, in whole or in part, "dispatching," which means the dispatch or direction of movement of commuter rail, freight rail or other carrier by railroad services subject to the jurisdiction of the Surface Transportation Board under Part A of Subtitle IV of Title 49 U.S.C.

"Dispute" means any dispute, difference or disagreement between the Parties arising under, out of or in connection with or relating to the Concession Agreement, including any question regarding its existence, validity or termination.

*"Dispute Resolution Panel"* means the Financial Panel or the Technical Panel and is described in APPENDIX C—*"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT"* herein.

"Dispute Resolution Procedures" means the procedure for the resolution of Disputes set out in the Concession Agreement.

"Dissemination Agent" means Digital Assurance Certification, L.L.C., as Dissemination Agent pursuant to the Continuing Disclosure Undertaking.

#### "Distribution" means:

(a) whether in cash or in kind, any (i) dividend or other distribution in respect of share capital; (ii) reduction of capital, redemption or purchase of shares; (iii) payments of any Shareholder Loans (whether of principal, interest, breakage costs or otherwise); (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was neither in the ordinary course of business nor on reasonable commercial terms (*provided* that payments under a Project Agreement shall not be included in the foregoing); and (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms (*provided* that payments under a Project Agreement shall not be included in the foregoing); or

(b) the amount of any release of any contingent funding liabilities to Lenders or the Equity Bridge Lenders.

"Distribution Account" means the Distribution Account created by and designated as such in the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Distribution Account" herein.

"Distribution Account Release Certificate" means the certificate substantially in the form of the Distribution Account Release Certificate attached to the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Distribution Account" herein.

"Distribution Date" means the actual date of payment to the Company from the Distribution Account pursuant to the Lockbox Account Agreement.

*"District"* or *"RTD"* means the Regional Transportation District in its capacity as the unit of government with responsibility for developing, maintaining and operating a mass transportation system for the Denver metropolitan area and as party to the Concession Agreement.

*"District Sales Tax Area"* means the geographic area comprising the District as described in the Act within which the District is authorized by Law to levy the Sales Tax.

"Documents" mean all documents or other receipts of the Company covering, evidencing or representing Inventory or Equipment, as defined in the Security Agreement. "Dollars" means lawful money of the United States of America.

"DTC" means The Depository Trust Company.

"DTH" means Denver Transit Holdings, LLC, a Delaware limited liability company.

"DUS Infrastructure" means the commuter rail station and associated infrastructure constructed by the DUS Infrastructure Contractor pursuant to the DUS Infrastructure Agreement.

"DUS Infrastructure Agreement" means the design build agreement dated April 30, 2009 between the Denver Union Station Project Authority and the DUS Infrastructure Contractor for the design and/or construction of the DUS Infrastructure.

"DUS Infrastructure Contractor" means Kiewit Western Co., a Delaware corporation.

"DUS Rail Segment" means the heavy and commuter rail segment of Denver Union Station comprising the DUS Rail Segment Site, the DUS Infrastructure and the DUS Systems.

"DUS Rail Segment Site" means the land, spaces and surfaces on which the DUS Infrastructure is constructed, as described in the Concession Agreement

*"DUS Systems"* means the communications systems, signaling system and traction electrification system (and all Concession Equipment forming part thereof) to be installed as part of the DUS Rail Segment.

"DUS to CRMF" means the commuter rail line between the DUS Rail Segment and the CRMF.

*"Eagle P3 Payment Account"* means the segregated account held by the Senior RTD Debt Trustee created pursuant to the Trustee's Instructions for the payment of the TABOR Portion.

*"Eagle P3 Project"* means the full project being provided by the Company to the District under the Concession Agreement, including: (a) the design and construction of the Commuter Rail Projects and the Commuter Rail Maintenance Facility, (b) the procurement and installation of the DUS Systems, (c) the procurement of the Rolling Stock, (d) the operation of the Commuter Rail Services and the operation and maintenance of the Commuter Rail Network and the Rolling Stock and (e) from the Actual DUS Access Date, the dispatch of all Heavy Rail Movements.

*"EAMs"* means the Enterprise Asset Management software developed by Trapeze and implemented by the O&M Contractor for purposes of operations of the Project.

*"East Corridor"* means the commuter rail line between the DUS Rail Segment and Denver International Airport, now referred to as the "University of Colorado A Line", comprised of a 22.8-mile commuter rail transit corridor extending from Denver Union Station to Denver International Airport with six intermediate stations in locations throughout the City and County of Denver and the City of Aurora, Colorado.

"East Corridor Facilities" means the stations and park-n-ride facilities on the East Corridor, as described in the Concession Agreement.

*"East Corridor Project"* means the East Corridor Facilities and the Concession Equipment forming part of the East Corridor to be operated and maintained on the East Corridor Site as part of the East Corridor pursuant to the Concession Agreement and the O&M Contract.

*"East Corridor Service"* means the commuter rail service provided by the Company in accordance with the requirements on the East Corridor as set forth in the Concession Agreement.

"East Corridor Site" means the land, spaces and surfaces with respect to the East Corridor as described the Concession Agreement, as modified or supplemented pursuant to the Concession Agreement and Design Build Contract.

*"EMMA"* means the MSRB's Electronic Municipal Market Access (EMMA) system available on the Internet at <u>http://emma.msrb.org</u> and is the MSRB's required method of filing.

*"Encumbrance"* means any mortgage or deed of trust, lien, pledge, hypothecation, assignment, deposit arrangement, security interest, charge, preference, easement or encumbrance or any other agreement or arrangement having substantially the same economic effect.

"End Date" means the Expiry Date, or if earlier, the Termination Date.

*"Environment"* means:

(a) with respect to the Financing Documents, soil, land, surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life or habitat and any other environmental medium or natural resource; or

(b) with respect to the Material Project Contracts, the physical conditions which exist within the area which will be affected by a proposed project, including land, air (including that within the Concessionaire-operated Components or buildings or natural or man-made structures), water (including territorial, coastal and inland waters and groundwater and drain and sewer water), minerals, flora, fauna, noise and objects of historic or aesthetic significance.

*"Environmental Clean-up Work"* means any work relating to the removal, remediation or clean-up of any Environmental Condition by the Company.

*"Environmental Condition"* means the presence, on, in or under any Site, of Hazardous Material (or environmental media contaminated with Hazardous Material) and/or the presence on, in or under any adjacent off-Site area of Hazardous Materials (or environmental media contaminated with Hazardous Material) that shall have migrated to or from the Site at concentration levels:

(a) at which a Relevant Authority requires investigation, removal, remedial action or off-site disposal or management of such Hazardous Material as a hazardous or solid waste;

(b) which exceed Colorado Basic Standards for Ground Water or residential risk-based soil or indoor air screening levels or screening levels protective of groundwater established or adopted by the Colorado Department of Public Health and Environment, the Colorado Department of Labor and Employment Division of Oil and Public Safety, or the United States Environmental Protection Agency, or exceed naturally-occurring or background concentrations, if such levels are greater than such standards or residential risk-based screening levels or screening levels protective of groundwater; or

(c) which would require additional personnel protective equipment, medical monitoring, off-site disposal or training in excess of two hours to comply with applicable Law governing the management, remediation, or disposal of such Hazardous Material.

"Environmental Law" means any Law that addresses, is related to or is otherwise concerned with the Environment or environmental, health or safety issues, including any Law relating to any emissions, releases, threatened releases or discharges of Hazardous Materials into the Environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, labeling, clean-up or control of Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.) ("CERCLA"), the Resource Conservation and Recovery

Act, as amended (42 U.S.C. Sections 6901 et seq.) ("RCRA") and the Clean Water Act (33 U.S.C. Section 1251 et seq.) or any foreign, state or local equivalent thereof.

*"Equator Principles"* means the global set of standards used for determining, assessing and managing social and environmental risks in project financing for projects and refinancings with a total project capital cost of \$10 million or more.

*"Equipment"* means all equipment of the Company (including any embedded software), all spare parts and related supplies, including any of the foregoing obtained by the Company in exchange for any such equipment, spare parts and related supplies.

*"Equity Bridge Lenders"* means the credit or financial institutions which are from time to time parties to or have rights under any agreement pursuant to which they agree to provide finance facilities to be repaid from the proceeds of Shareholder Loans, the repayment of which is otherwise guaranteed by the Shareholders.

*"Equity IRR"* means, as of any date of determination, where used for the purpose of calculating a refinancing gain in accordance with the Concession Agreement, any adjustment to any Service Payment or the RTD Default Amount in the case of any termination, in each case, in accordance with the Concession Agreement and in respect of the Shareholders, the projected nominal rate of return on the capital contributions made by the Shareholders to the Company and any Shareholder Loans or other similar finance provided by the Shareholders, calculated as of such date by reference to the Financial Model over the full term of the Concession Agreement, having regard to Distributions made and projected to be made.

*"Equity Market Value"* means, in the case of a termination as a result of an RTD Termination Event, the net present value of the anticipated future nominal Distributions (post-tax on the part of the Company but pre-tax on the part of the Shareholders) in respect of drawn share capital and payments in respect of any Shareholder Loans as of the Termination Date determined by an independent third party expert appraiser within ninety (90) days of the appointment by both parties of such expert appraiser.

"Equity Participants" means Fluor, John Laing and Aberdeen, and each of their respective successors and assigns.

*"ERISA"* means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414 of the Code.

*"Event of Default"* means

(a) with respect to the Financing Documents, as listed under "SECURITY FOR THE BONDS— Indenture—Events of Default under the Indenture" and "SECURITY FOR THE BONDS—Loan Agreement";

(b) with respect to the Concession Agreement, the Concession Termination Events and the RTD Termination Events;

(c) with respect to the Leasehold Mortgages, the occurrence of an Event of Default under the Loan Agreement, as described in "SECURITY FOR THE BONDS—Leasehold Mortgages";

(d) with respect to the Design Build Contract, as described under "PRINCIPAL PROJECT AGREEMENTS—Design Build Contract—*Termination Rights*"

(e) with respect to the O&M Contract, as described under "PRINCIPAL PROJECT AGREEMENTS—Termination Rights" and APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

*"Existing Facilities"* means all fixtures, facilities and infrastructure existing on the CRMF Site, the East Corridor Site, the Gold Line Site and the Northwest Rail Electrified Segment Site on the date the District provides Vacant Possession to the Company, which fixtures, facilities and infrastructure have been retained and incorporated into the Commuter Rail Network in accordance with the Concession Agreement.

"Expiry Date" or "Concession Expiry Date" means December 31, 2044.

*"Extensive Force Majeure Event"* means, subject to the Concession Agreement, a Force Majeure Event that has occurred and either:

(a) the consequences thereof are continuing for a period of 180 consecutive days or more or have materially prevented or delayed a Party from performing a substantial proportion of its obligations under the Concession Agreement for a period of 180 days or more in aggregate within a period of 360 consecutive days; or

(b) The District has determined that the relevant Restoration Plan is unfeasible, in accordance with the Concession Agreement.

*"FasTracks Bonds"* means bonds or other financial obligations heretofore or hereafter issued or entered into by the District which bonds or other financial obligations are payable from and are secured by a lien on the RTD Sales Tax Revenues which lien is superior to the pledge of the TABOR Portion pursuant to the Concession Agreement.

"FasTracks Indentures" means any indentures or other agreements heretofore or hereafter executed and delivered by the District in connection with the issuance of FasTracks Bonds.

*"FasTracks Plan"* means the public transportation expansion plan for the Denver metropolitan area in the State developed by the District, including the construction and operation of certain commuter rail lines, described in *"THE PROJECT"* and APPENDIX A—*"THE REGIONAL TRANSPORTATION DISTRICT"* herein.

*"Federal Book-Entry Regulations"* means (i) the United States Department of the Treasury's regulations governing "Securities" (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks' book-entry system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (ii) regulations analogous and substantially similar to the regulations described in clause (i) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

*"Federal Tax Certificate"* means, with respect to any issuance of a series of Bonds under the Indenture with respect to which interest on the Bonds is intended to be excluded from gross income for federal income tax purposes, (a) one or more certificates or agreements that set forth the Issuer's or the Company's expectations regarding the investment and use of proceeds of any series of Bonds and other matters relating to Bond Counsel's opinion regarding the federal and State income tax treatment of interest on such Bonds, including any instructions delivered by Bond Counsel in connection with any such certificate or agreement; and (b) any amendment or modification of any such certificate or agreement that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not adversely affect the exclusion of interest on such bonds from gross income for federal and State income tax purposes.

"Final Acceptance" means the issuance of the Revenue Service Commencement Certificate for the East Corridor Project.

*"Final Completion"* means, in respect of each Commuter Rail Project and associated Commuter Rail Service, the satisfaction of the Final Completion Requirements (as defined in the Concession Agreement) for such Commuter Rail Project and associated Commuter Rail Service in accordance with the Concession Agreement and the Design Build Contract.

*"Final Completion Certificate"* means the Final Completion Certificate issued by the Independent Engineer pursuant to the Concession Agreement certifying that the Final Completion Date of a Commuter Rail Project has occurred.

*"Final Completion Date"* means, in respect of each Commuter Rail Project and associated Commuter Rail Service, the date on which Final Completion of such Commuter Rail Project and associated Commuter Rail Service occurred, as evidenced by the issuance of the Final Completion Certificate for such Commuter Rail Project and associated Commuter Rail Service.

*"Final Project Design"* means the 100% complete design of all elements of the Commuter Rail Projects, the CRMF, the Rolling Stock and the DUS Systems enabling the procurement, manufacturing and/or construction thereof (as evidenced by the final design submittals).

"Final Proposal Due Date" means May 14, 2010.

"Financial Close" means the Closing Date.

*"Financial Model"* means the base case financial model provided by the Company and approved by the District forecasting the revenues and expenditures delivered by the Company on the Closing Date, as amended in connection with the Series 2010 Refinancing and as adjusted from time to time.

*"Financial Panel"* means the Financial Panel to which Disputes of a financial nature are referred in accordance with the Concession Agreement.

*"Financial Products Agreement"* means an interest rate swap, cap, collar, floor, other hedging agreement, arrangement or security, however denominated, entered into by the District with a provider with respect to the specific Securities or as otherwise permitted by Colorado Law and providing that any payments by the District thereunder are payable from a lien on all or a portion of the RTD Sales Tax Revenues and for the purpose of (a) reducing or otherwise managing the District's risk of interest rate changes or (b) effectively converting the District's interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

"Financial Products Payments" means payments periodically required to be paid to a provider by the District pursuant to a Financial Products Agreement, but specifically excluding Financial Products Termination Payments.

*"Financial Products Termination Payment"* means any termination, settlement or similar payments required to be paid upon an early termination of the Financial Products Agreement as a result of any event of default or termination event thereunder.

*"Financing Documents"* means the Indenture, any Supplemental Indenture executed with respect to the Bonds, the Bonds, the Series 2020 Issuer Loan Agreement, any Additional Parity Bonds Issuer Loan Agreement (if executed), the Lockbox Account Agreement, the Direct Agreements, the Security Agreement, the Pledge Agreement, the Leasehold Mortgages, the Continuing Disclosure Undertaking and any fee letter entered into by the Company with any of the Underwriters, the Trustee or the Issuer.

*"Financing Parties"* means the Persons, including financial insurers, financial institutions and bondholders which are from time to time parties to, or otherwise have rights under or pursuant to, any of the Designated Credit Agreements and/or who provide a financing facility or facilities (including any hedging arrangements, any financial insurance policies, lease financing or tax benefit monetization financing) to the Company in accordance with such Designated Credit Agreements, and any trustee or agent acting on their behalf.

*"Fiscal Year"* means, with respect to the District and the Company, the twelve months commencing on January 1 of any calendar year and ending on December 31 of such calendar year, or any other 12-month period which the District or the Company designates as its respective fiscal year.

"Fitch" means Fitch Ratings, Inc. and any successor to its rating agency business.

"Fixtures" means all property exclusive of tenants' betterments which is so attached to the Commuter Rail Network or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

"Fluor" means Fluor Enterprises, Inc., a California corporation and subsidiary of Fluor Corporation.

*"FM Termination Amount"* means an amount payable by the District upon termination of the Concession Agreement as a result of an Extensive Force Majeure Event and as described in APPENDIX C—*"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT"* herein.

"FM Termination Event" means an Extensive Force Majeure Event that results in termination of the Concession Agreement.

*"Force Majeure Event"* means, as set forth in the Concession Agreement, that list of events or combination of events outside the reasonable control of the Affected Party, and which was not reasonably foreseeable by the Affected Party as at the date of the Concession Agreement, where such event materially and unavoidably prevents or delays the Affected Party from performing any of its obligations under the Concession Agreement and as described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT" herein.

"Forecast Renewal Work Schedule" means a schedule, prepared by the O&M Contractor, providing an annual update of the original Renewal Work Budget and Schedule, showing elements of Renewal Work projected by the O&M Contractor to be performed and completed during the next five years and the O&M Contractor's best estimate of the cost thereof in then-current dollars, taking into account the then-current condition of the Concessionaire-operated Components, the remaining term, the requirements of the O&M Contract and the handover and reinstatement requirements under the Concession Agreement.

"FRA" means the Federal Railroad Administration, an agency of the United States Department of Transportation.

"FTA" means the Federal Transit Administration, an agency of the United States Department of Transportation.

*"Funding Requisition"* means the requisition form requesting disbursement of funds from the Cost of Issuance Fund in the form attached to the Indenture.

"GAAP" means such accepted accounting practice as conforms at the time to applicable generally accepted accounting principles in the United States of America, consistently applied; *provided*, *however*, that, in applying GAAP, non-cash adjustments shall not be made.

"General Manager" means any individual holding the position of general manager of the District or equivalent thereof from time to time.

"Gold Line" means the commuter rail line, now referred to at the "G Line", comprised of an 11.2-mile commuter rail corridor from Denver Union Station passing through northern Denver, unincorporated Adams County, the City of Arvada and the City of Wheat Ridge, Colorado.

"Gold Line Facilities" means the stations and park-n-ride facilities on the Gold Line and at the 41st and Fox Street and Pecos Street Stations, as described in the Concession Agreement.

*"Gold Line Project"* means the Gold Line Facilities, the Concession Equipment forming part of the Gold Line and the other Services to be operated and maintained as part of the Gold Line in accordance with the Project Requirements and otherwise pursuant to the Concession Agreement and the O&M Contract.

"Gold Line Service" means the commuter rail service provided by the Company in accordance with the requirements of the Concession Agreement on the Gold Line and DUS to Pecos Junction.

"Gold Line Site" means the land, spaces and surfaces with respect to the Gold Line as described in the Concession Agreement, as modified or supplemented in accordance with the Concession Agreement.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Requirements and engaged in the same type of undertaking as the Company, the Project Contractors and/or the Subcontractors, as the case may be, and under the same or similar circumstances and conditions, and using information reasonably available at the relevant time.

*"Governmental Approval"* means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority, including sitting and operating permits and licenses and any of the foregoing under any applicable environmental law, that are required for the leasing, operation, improvement, tolling or maintenance of the Project.

"Governmental Authority" means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

*"Governmental Rule"* means any statute, law, treaty, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing, in each case, having the force of law by any Governmental Authority, which is applicable to any person, whether in effect as of the date of Financial Close or thereafter.

*"Guarantor"* means, collectively or separately, Fluor Corporation, a Delaware corporation, Balfour Beatty, LLC, a Delaware limited liability company, and Balfour Beatty plc, a public limited company organized under the laws of England.

*"Handover Amount"* means an amount equal to the estimated cost of ensuring that the Concessionaireoperated Components comply in all material respects with the Handover and Reinstatement Work Requirements to be paid by the District in the event that it is agreed or determined in accordance with the Dispute Resolution Procedure that the Concessionaire-operated Components do not comply in all material respects with the Handover and Reinstatement Work Requirements, and is described in APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT" herein.

"Handover and Reinstatement Work Requirements" means the requirements that the Company, on the Expiry Date, hand over and, to the extent not already owned by the District, transfer ownership of title to the Concessionaire-operated Components free of all Encumbrances and free of charge to the District in a condition which: (i) could reasonably be expected of an equivalent commuter rail system which has been in existence and operated for a period equal to the period during which the relevant Commuter Rail Project has been operated and which has been maintained in accordance with the O&M Standards during that period and (ii) is capable of complying with the O&M Standards (as amended pursuant to the terms of the Concession Agreement) for a period

of not less than three years from the Expiry Date, and is described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION CONTRACT" herein.

*"Handover Security"* means one or more on-demand letters of credit (in such form as may be reasonably required by the District) for the benefit of the District provided by the company in respect of the Reinstatement Work valid for a period of ninety (90) days after the Expiry Date in an aggregate amount that is 20% higher than the Reinstatement Amount to be delivered no later than seven days after agreement of the Reinstatement Proposal or determination in accordance with the Dispute Resolution Procedure, but in any event not earlier than 18 months before the Expiry Date, and is described in APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT" herein.

*"Hazardous Materials"* means, with respect to the Financing Documents, any material, substance or waste that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials and polychlorinated biphenyls.

"Heavy Rail Movements" means all movements of the Rolling Stock and any rolling stock owned by any Heavy Rail Operator on the DUS Rail Segment or, if required pursuant to the terms of the Concession Agreement, the Commuter Rail Network.

*"Heavy Rail Operators"* means the National Railroad Passenger Corporation (Amtrak), Burlington Northern Santa Fe Corporation (and its Affiliates) and Union Pacific Corporation (and its Affiliates) and any other operator of Rolling Stock licensed by the District from time to time to operate on the Commuter Rail Network.

*"Improvements"* means those certain site improvements relating to the District's commuter rail service known as the Eagle P3 Project located on the Commuter Rail Network.

*"Incurred Cost Event"* means (a) any Relief Event, Force Majeure Event or Discriminatory Change in Law as a result of which Incurred Costs are incurred by the Company and are due under the Concession Agreement, Design Build Contract and/or the O&M Contract, as the case may be or (b) any other event in relation to which the Company's costs are estimated or calculated by reference to the RTD Pricing Conditions in accordance with the terms of the Concession Agreement, Design Build Contract and/or the O&M Contract and/or the O&M Contract, as the case may be.

"Incurred Costs" means costs and expenses estimated or calculated in accordance with the RTD Pricing Conditions, and without double counting, which are incurred, estimated or calculated, as the case may be, in connection with an Incurred Cost Event.

"Indebtedness" means, with respect to any Person: (a) indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, other than current trade payables incurred in the ordinary course of business, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) any lease which, in accordance with GAAP, is required to be capitalized on the balance sheet of such Person (and the amount of these obligations shall be the amount so capitalized), (f) all obligations, contingent or otherwise, of such Person under acceptances issued or created for the account of such Person, (g) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (h) all net obligations of such Person pursuant to hedges, (i) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (h) above, and (j) all Indebtedness of the type referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. *"Indenture"* means that certain Amended and Restated Indenture of Trust, dated as of December 1, 2020, between the Issuer and the Trustee, which amends and restates the Original Indenture.

*"Indenture Account Collateral"* means, subject to the Indenture, (a) all Indenture Project Accounts and funds deposited therein and moneys, funds, instruments, securities and all other property from time to time credited to such Indenture Project Accounts, (b) all "securities accounts" (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts, and (c) all "proceeds" (as defined under the UCC) of any or all of the foregoing that is subject to a security interest granted by the Company pursuant to the Security Agreement.

*"Indenture Project Accounts"* means the Debt Service Reserve Account, the Interest Accounts, the Principal Accounts, the Series 2020 Cost of Issuance Account, any sub-accounts of the foregoing and any other account or sub-account created from time to time pursuant to the Indenture.

"Indenture Securities Accounts" mean the Indenture Project Accounts.

*"Indenture Securities Intermediary"* means The Bank of New York Mellon Trust Company, N.A. in its capacity as securities intermediary on behalf of the Secured Parties under the Indenture.

*"Independent Consultant"* means any financial advisor, consultant or model auditor of national standing appointed by the Company for the purposes of providing the certifications required pursuant to the Indenture.

"Independent Engineer" means the independent engineer appointed by the District and the Company in accordance with the Concession Agreement, as replaced or succeeded from time to time.

"Infrata" means Infrata Limited.

"Instruments" mean all instruments, chattel paper (whether tangible or electronic) or letter of credit rights.

*"Insurance"* means the contracts and policies of insurance taken out by or on behalf of the Company in accordance with any Transaction Document (to the extent of its interest) in which the Company has an interest, other than any municipal bond or financial guaranty insurance policy issued to guarantee the scheduled payment when due of any secured obligations or any bonds related thereto.

*"Intellectual Property Rights"* means patents, patent applications, inventions, trademarks, trademark applications, trade names, service marks, copyrights, copyright applications, topography rights, rights to extract information from a database, database rights, rights in drawings, design rights, trade secrets, proprietary information, know-how and rights of confidence, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them.

"Interest Accounts" means the Interest Accounts of the Debt Service Fund created and established pursuant to the Indenture and described in "SECURITY FOR THE BONDS—Indenture" herein.

"Interest Payment Date" means each January 15 and July 15, commencing on July 15, 2021 and continuing for so long as the Series 2020 Bonds are outstanding.

"Interest Payments" means, with respect to a payment date for the Bonds, the interest (including the interest component of the Redemption Price due in connection with any mandatory redemption payment on any Bond) due on such date on the Bonds.

"Interest Period" means the period beginning on an Interest Payment Date and ending on the day immediately preceding the next Interest Payment Date; *provided* that the first Interest Period for the Series 2020 Bonds shall commence on the Closing Date and end on the day immediately preceding the first Interest Payment Date for the Bonds; *provided further* that the first Interest Period for any Additional Parity Bonds issued pursuant to

the Indenture after the Closing Date shall commence on the date of issuance of such Additional Parity Bonds and end on the day immediately preceding the next succeeding Interest Payment Date for the Bonds.

*"Interface Agreement"* means that certain Interface Agreement, dated as of July 9, 2010, among the Design Build Contractor, the O&M Contractor and the Company with respect to the coordination of their respective obligations in connection with the Eagle P3 Project.

"Inter-Governmental Agreement" means any agreement entered into between the District and a Relevant Authority in relation to the Eagle P3 Project.

*"Inventory"* means all inventory and all other goods of the Company (including any embedded software) that are held by the Company for sale, lease or furnishing under a contract of service (including to its subsidiaries or Affiliates), that are so leased or furnished or that constitute raw materials, work in process or material used or consumed in its business, all goods obtained by the Company in exchange for any such goods, all products made or processed from any such goods and all substances, if any, commingled with or added to any such goods as defined in the Security Agreement.

*"Invoice"* means the invoice submitted by the Company to the District for the Service Payment in respect of such calendar month, in the form attached to the Concession Agreement.

"IRS" means the Internal Revenue Service.

*"Issuer"* means the Regional Transportation District in its capacity as "conduit issuer" in the issuance of the Series 2020 Bonds, which are special, limited obligations of the Issuer.

"JAMS" means the entity that will conduct any arbitration disputes under the Design Build Contract and O&M Contract.

"JLL" means John Laing Limited.

"John Laing" means John Laing Investments Limited.

*"Key Third Parties"* mean the District, the Project Third Parties, the Heavy Rail Operators, DUSPA, FTA and other Relevant Authorities under the O&M Contract.

*"Last Final Completion Certificate"* means the last Final Completion Certificate, which is both the Final Completion Certificate for the Gold Line and the last Final Completion Certificate for the Project.

"Law" means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of the Concession Agreement, including binding court and judicial decisions having the force of law, and including any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Relevant Authority.

*"Lease Period"* means the period ending on the End Date; *provided* that in the case of Rolling Stock, the Lease Period will end on the later of (a) the End Date and (b) the Rolling Stock Termination Date (as defined in the Concession Agreement).

*"Leasehold Mortgages"* means the Amended and Restated Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 1, 2020 by the Company to the Public and the Trustee of each county in which the Commuter Rail Network is located, which, in each case, amends and restates an Original Leasehold Mortgage.

*"Leases"* means all residential and commercial leases by the Company, as lessor, and a third party, as lessee, of any portion of the Commuter Rail Network, whether existing as of the Leasehold Mortgages or executed thereafter (other than the Concession Agreement), if any, which are subject to the Leasehold Mortgages.

"Lenders" means the Persons, including financial insurers, financial institutions and bondholders, which are, from time to time, parties to, or otherwise have rights under or pursuant to, any of the Designated Credit Agreements and/or who provide a financing facility or facilities (including any hedging arrangements, any financial insurance policies, lease financing or tax benefit monetization financing) to the Company in accordance with such Designated Credit Agreements.

"Lenders' Direct Agreement" means that Direct Agreement entered into among the District, the Agent Bank (as defined in the Concession Agreement) on behalf of the Owners of the Bonds and the Company and as described in APPENDIX D—"SUMMARY OF CERTAIN PROVISIONS OF THE LENDERS' DIRECT AGREEMENT" herein.

"Lenders' Liabilities" means all unpaid principal of the Bonds and all interest accrued on the Bonds until the Termination Date, as well as other amounts owed by the Company to lenders and financial institutions and certain other payments, including any prepayment costs, make-whole amounts and breakage costs.

"Loan" means the loan to the Company by the Issuer pursuant to the Series 2020 Issuer Loan Agreement of the entire amount of the proceeds from any Series 2020 Bonds issued pursuant to the Indenture.

*"Loan Agreement"* means that certain Amended and Restated Loan Agreement dated as of December 1, 2020, by and between the Issuer and the Company, which amends and restates the Original Loan Agreement, pursuant to which the Issuer agrees to loan the entire proceeds of the Series 2020 Bonds to the Company.

"Loan Agreement Default" means any "Event of Default" under the Series 2020 Issuer Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed).

*"Lockbox Account Agreement"* means that certain Amended and Restated Lockbox Account Agreement, dated as of December 1, 2020, between the Company, the Trustee, the Securities Intermediary and the Account Bank, which amends and restates the Original Lockbox Account Agreement.

*"Lockbox Account Collateral*" means, subject to the Lockbox Account Agreement, (a) all Lockbox Project Accounts and funds deposited therein and moneys, funds, instruments, securities and all other property from time to time credited to such Lockbox Project Accounts, (b) all "securities accounts" (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts, and (c) all "proceeds" (as defined under the UCC) of any or all of the foregoing, that is subject to a security interest granted by the Company pursuant to the Security Agreement.

"Lockbox Project Accounts" means the Revenue Account, and within the Revenue Account, the subaccounts designated the Series 2020 Interest Sub-Accounts and the sub-accounts designated the Series 2020 Principal Sub-Accounts, the Renewal Works Reserve Account, the Operating Account, the Distribution Account and the Borrower Change In Law Contingency Account, and any other sub-account of the foregoing accounts created from time to time pursuant to the Lockbox Account Agreement.

*"Lock-Up Funds Application Certificate"* means the Lock-Up Funds Application Certificate in a form substantially as set forth in the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Distribution Account" herein.

"Losses" means any losses, damages, costs, expenses, charges, fees, fines or liabilities.

"Material Adverse Effect" means a material adverse effect on:

(a) The business, properties, performance, results of operation or condition (financial or otherwise) of the Company;

(b) The legality, validity or enforceability of a Financing Document, the Concession Agreement or the Design Build Contract;

(c) The Company's ability to observe and perform its material obligations under any Financing Document or the Concession Agreement, the Design Build Contractor's ability to observe and perform its material obligations under the Design Build Contract or the O&M Contractor's ability to observe and perform its material obligations under the O&M Contract;

(d) The validity, perfection or priority of the security interest created pursuant to the Security Documents; or

(e) The rights of the Owners of the Bonds and the Trustee under the Financing Documents, including the ability of the Owners of the Bonds or the Trustee to enforce their rights and remedies under the Financing Documents;

*provided* that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein, (ii) financial, banking, currency or capital markets fluctuations or conditions, including changes in interest rates, (iii) conditions affecting the transportation industry generally, (iv) any action, omission, change, effect, circumstance or condition contemplated by the Financing Documents or attributable to the execution, performance or announcement of the Financing Documents or the transactions contemplated thereby, or (v) events that are Relief Events or Force Majeure Events.

*"Material O&M Subcontractor"* means each of the O&M Subcontractors specified in the Concession Agreement and/or the O&M Contract, as the case may be, as a Material O&M Subcontractor.

"*Material Project Contracts*" means: (a) the Concession Agreement; (b) the Design Build Contract; (c) any Rolling Stock Supply Contracts; (d) the Design Build Guaranty; (e) the O&M Contract; and (f) the O&M Guaranty.

"Material Subcontractor" means each Material Design Build Subcontractor and Material O&M Subcontractor.

"Maximum Annual Debt Service Requirements" means the maximum aggregate amount of Debt Service Requirements (excluding redemption premiums) due on the Securities for which such computation is being made in any Bond Year beginning with the Bond Year in which Debt Service Requirements of such Securities are first payable after the computation date and ending with the Bond Year in which the last of the Debt Service Requirements are payable. For purposes of this meaning, "Debt Service Requirements" means, for any period, the amount required to pay the principal of and interest on any designated Securities during such period; *provided* that the determination of the Debt Service Requirements of any Securities shall assume the redemption and payment of such Securities on any applicable mandatory redemption dates; and *provided further* that in any computation relating to the issuance of additional Senior RTD Debt required by the Concession Agreement, there shall be excluded from the computation of Debt Service Requirements any proceeds on deposit in a bond fund or similar fund or account for such Securities constituting capitalized interest.

"Minimum Projected Debt Service Coverage Ratio" means, as of the date of determination, the ratio of A divided by B where:

A = the Borrower's Free Cash Flow for the 12-month period ending on the Calculation Date immediately preceding the date of the proposed issuance of any Additional Parity Bonds; and

B = the maximum amount payable in any one Fiscal Year with respect to all scheduled principal and interest on any Bonds Outstanding and any Additional Parity Bonds to be issued on such date of determination.

"Modification" means the modification to the Scope of Services and/or an adjustment to the Monthly Operator's Fee and/or payment or reimbursement of costs and expenses by the Company in accordance with the terms of the O&M Contract.

*"Monthly Operator's Fee"* means the monthly fees which are due and payable to the O&M Contractor for the performance of the Services, as more specifically provided for in the O&M Contract and described in Appendix F.

"Moody's" means Moody's Investors Service and any successor to its rating agency business.

"MSRB" means the Municipal Securities Rulemaking Board.

"Multiemployer Plan" means a Pension Plan which is a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA.

"Nationally Recognized Rating Agency" means any nationally recognized securities rating agency that provides a rating on the Bonds at the request of the Company.

"NEPA" means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

"Net Effective Interest Rate" means the Net Interest Cost of Securities issued pursuant to the 2004 Election divided by the sum of the products derived by multiplying the principal amount of the Securities maturing on each maturity date by the number of years from their issue date to their respective maturities. In all cases, Net Effective Interest Rate will be computed without regard to any option of redemption prior to the designated maturity dates of the Securities.

"*Net Interest Cost*" means the total amount of interest to accrue on Securities issued pursuant to the 2004 Election from their issue date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said Securities are being or have been sold. In all cases, Net Interest Cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the Securities.

"Non-Recourse Parties" means DTH or any past, present or future officers, directors, employees, shareholders, agents, attorneys or representatives of DTH or any of its Affiliates (other than the Company).

"North Metro Corridor" means the 18-mile transit corridor between Denver Union Station and 162nd Avenue passing through Denver, Commerce City, Thornton, Northglenn and unincorporated Adams County.

"Northwest Rail Corridor" means the 41-mile rail transit corridor between Denver Union Station and Longmont, now referred to as the "B Line".

"Northwest Rail Electrified Segment" or "NWES" means the commuter rail line comprised of the line between the DUS Rail Segment and South Westminster Station, from which the Gold Line diverges at Pecos Junction, as described in the Concession Agreement.

"Northwest Rail Electrified Segment Facilities" means the stations and park-n-ride facilities at South Westminster Station, as described in the Concession Agreement.

"Northwest Rail Electrified Segment Project" means the Northwest Rail Electrified Segment Facilities and the Concession Equipment forming part of the Northwest Rail Electrified Segment to be operated and maintained as part of the Northwest Rail Electrified Segment in accordance with the Project Requirements and otherwise pursuant to the Concession Agreement and the O&M Contract. "Northwest Rail Electrified Segment Service" means the commuter rail service provided by the Company in accordance with the requirements of the Concession Agreement on the Northwest Rail Electrified Segment.

"Northwest Rail Electrified Segment Site" means the land, spaces and surfaces with respect to the Northwest Rail Electrified Segment as described in the Concession Agreement and as modified or supplemented in accordance with the Concession Agreement.

*"NWES Environmental Evaluation"* means the Northwest Rail Corridor Draft Environmental Evaluation dated February 2010 developed by the District in connection with the environmental evaluation conducted by the District pursuant to NEPA with respect to the Northwest Rail Electrified Segment.

"O&M Contract" means the operating agreement for the operation and maintenance services and lifecycle works as required under the Concession Agreement, dated July 9, 2010, as amended on July 22, 2010, between the Company and the O&M Contractor.

"O&M Contractor" means Denver Transit Operators, LLC, a Delaware limited liability company and its successors, assigns and replacements under the O&M Contract.

"O&M Contractor Direct Agreement" means the Direct Agreement, dated as of August 1, 2010, between the Trustee, the O&M Contractor and the Company.

"O&M Expenditures" means, for any period, the sum (without duplication) of the following costs paid by or on behalf of the Company: (a) the sum of all salaries, employee benefits and other compensation; plus (b) Insurance premiums; plus (c) costs of operating and maintaining the Eagle P3 Project, including renewal works; plus (d) property and other taxes payable by the Company in respect of the Eagle P3 Project; plus (e) fees for accounting, legal and other professional services, including fees paid to the Trustee; plus (f) general and administrative expenses; plus (g) capital expenditures (other than capital expenditures included in the capital budget); plus (h) all other cash expenditures approved by the Technical Advisor relating to operation, maintenance and administrative costs of the Eagle P3 Project; and plus (i) filings or other costs required in connection with the maintenance of the first priority lien of the Owners of the Bonds and the Trustee on behalf of the Owners of the Bonds in the Project Collateral; *provided*, that the following shall be excluded from such calculation: (i) payments of principal, interest or fees with respect to the Bond Obligations and other Indebtedness permitted under the Financing Documents; (ii) capital expenditures paid with funds made available to the Company by contributions of equity or from the proceeds of Additional Parity Bonds; (iii) any payments, dividends or distributions to any Person in respect of any capital stock of the Company; (iv) depreciation, amortization of intangibles and other non-cash accounting entries of a similar nature for such period; and (v) income taxes.

"O&M Guarantors" means Fluor Corporation, Balfour Beatty, LLC and Balfour Beatty plc.

"O&M Guaranty" means each guarantee executed and delivered by the O&M Guarantors in favor of the Borrower substantially in the form of Exhibit L-1 or Exhibit L-2 of the O&M Contract.

"O&M Letter of Credit" means the letter of credit given to the Company by the O&M Contractor as security for the full and timely performance of its obligations under the O&M Contract that is issued by a Qualifying Institution.

"O&M Specifications" means the specifications and provisions set out in Attachment 10 (O&M Specifications) to the Concession Agreement.

"O&M Standards" means the standards with which the Company must comply in the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components throughout the Operating Period described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

"O&M Subcontractor" means any Subcontractor to the O&M Contractor.

"O&M Submittals" means the manuals, programs and plans referred to in the Concession Agreement and/or the O&M Contract to be prepared, adopted, complied with and/or implemented by the Company and/or the O&M Contractor, as the case may be, setting out policies, instructions and procedures for the operation, inspection and maintenance of the Concessionaire-operated Components during the Operating Period.

*"OCIP"* means the Owner Controlled Insurance Program procured by the District, which provides certain insurance coverages described in the Concession Agreement, as described in APPENDIX C—"SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT."

"OCIP Manual" means the RTD FasTracks Owner Controlled Insurance Program Manual Eagle P3 Project, a copy of which is attached to the Concession Agreement, as amended from time to time.

"On Time Availability" is a part of the Availability Ratio as defined in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" herein.

"Operator" means the O&M Contractor.

"Operating Account" means the Operating Account contemplated by the Lockbox Account Agreement, or any replacement operating account that the Company may establish with another financial institution if (1) the replacement operating account contains a "deposit account" and, at the option of the Company, a "securities account" (both as defined in the UCC), (2) the Company executes a control agreement in the form attached to the Lockbox Account Agreement, or any other form of control agreement as agreed among the applicable financial institution, the Company and the Trustee and (3) the Company provides notice of the replacement operating account to the Account Bank (with a copy to the Trustee), as described in "ACCOUNTS AND FLOW OF FUNDS— Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Operating Account."

"Operating Expenses" means O&M Expenditures.

"Operating Period" means the period from (and including) October 20, 2017 to (and including) the earlier of the Expiry Date or the Termination Date, as described in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" herein.

"Operator Breakage Cost" means (a) the direct, out-of-pocket costs reasonably incurred by the O&M Contractor in withdrawing its equipment and personnel from the Sites and the Eagle P3 Project and in otherwise demobilizing and (b) the direct, out-of-pocket costs reasonably incurred by Operator in terminating contracts with Subcontractors.

*"Operator Termination Payments"* means a termination payment that the O&M Contractor will be entitled to receive upon termination of the O&M Contract in accordance with the O&M Contract, as described in APPENDIX F—"SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT."

"Operator's Fee" means the fees as described in the O&M Contract.

"Original Indenture" means the Indenture of Trust, dated as of August 1, 2010, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee, as amended, supplemented or otherwise modified from time to time prior to the Closing Date.

"Original Issue Discount Bonds" means any Bond which is sold at an initial public offering price (as set forth in the bond purchase agreement relating thereto) of less than par.

"Original Leasehold Mortgages" means the Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of August 1, 2020 by the Company to the Public and the Trustee of each county in which the Commuter Rail Network is located.

"Original Loan Agreement" means the Loan Agreement, dated as of August 1, 2010, between the Issuer and the Borrower, as amended, supplemented or otherwise modified from time to time prior to the Closing Date.

"Original Lockbox Account Agreement" means the Lockbox Account Agreement, dated as of August 1, 2010, by and among the Company and The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee, in its capacity as account bank and in its capacity as securities intermediary (as amended, supplemented or otherwise modified prior to the Closing Date).

"Original Pledge Agreement" means the Membership Interest Pledge Agreement, dated as of August 1, 2010, by and between Denver Transit Holdings, LLC, a Delaware limited liability company, as the pledgor and the Trustee, for the benefit of the Secured Parties (as amended, supplemented or otherwise modified prior to the Closing Date).

"Original Security Agreement" means the Security Agreement, dated as of August 1, 2010, by and between the Company, as the grantor, and the Trustee, for the benefit of the Secured Parties (as amended, supplemented or otherwise modified prior to the Closing Date).

"Other RTD Project" means any rail line or other transportation facility that is constructed, operated and/or maintained by or on behalf of the District (other than by the Company, but including any Concessionaire-operated Expansion) during the Lease Period.

"Outstanding" means, as of any date of determination, all Bonds that have been executed, authenticated and delivered under the Indenture, except:

(a) any Bond, or portion thereof, on which all principal and interest due or to become due on or before maturity has been paid;

(b) any Bond, or portion thereof, on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Bond;

(c) Bonds in lieu of which other Bonds have been executed, authenticated and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of Bonds or the replacement of mutilated, lost, stolen or destroyed Bonds;

(d) Bonds that have been canceled by the Trustee or that have been surrendered to the Trustee for cancellation;

(e) Bonds on which all principal and interest or the Redemption Price is due and for which the Trustee holds moneys sufficient to pay the principal and interest or Redemption Price for the benefit of the Owner thereof pursuant to the Indenture;

(f) Bonds that have been defeased pursuant to and in accordance with the Indenture;

(g) for purposes of any consent, vote or other action to be taken by the Owners of a specified percentage of Bonds under the Indenture, the Series 2020 Issuer Loan Agreement or an Additional Parity Bonds Issuer Loan Agreement, all Bonds held by or for the account of the Issuer or by any person controlling, controlled by or under common control with the Issuer, unless all Bonds are held by the Issuer or by any person controlling, controlled by or under common control with the Issuer; and

(h) for purposes of any consent, vote or other action to be taken by the Owners of a specified percentage of Bonds under the Indenture, the Series 2020 Issuer Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement, all Bonds held by or for the account of the Borrower or by any person controlling, controlled by or under common control with the Borrower.

"Owner" of a Bond means the registered owner of such Bond as shown in the registration records of the Trustee.

"Party" means, with respect to any Transaction Document, a party to such Transaction Document.

"Passengers" mean members of the public lawfully present on or using any part of the Concessionaireoperated Components.

*"Pension Plan"* means a "pension benefit plan" as defined in Section 3(2) of ERISA that is subject to Title IV of ERISA other than a Multiemployer Plan, that is maintained or contributed to by the Company and ERISA Affiliate.

"Performance Deduction" means the formula set forth in the Concession Agreement for determining such amount and as described in "PAYMENTS UNDER THE CONCESSION AGREEMENT—Service Payments" herein.

"Performance Deduction Percentage" means the "Performance Deduction Percentage ( $PDP_{mn}$ )" formula as determined in the Concession Agreement.

"Permit" means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Eagle P3 Project to be issued by the District, any Relevant Authority, any Utility Owner or any Project Third Parties.

"Permitted Indebtedness" means:

(a) the Bond Obligations;

(b) [Reserved];

(c) unsecured Indebtedness from a Sponsor subordinate to the Bond Obligations on terms and conditions to be agreed upon by the Company and the subordinate lenders and subject to Attachment D of the Series 2020 Issuer Loan Agreement and Article V of the Lockbox Account Agreement (such Indebtedness being the "Permitted Subordinated Debt");

(d) purchase money obligations in an amount not to exceed \$500,000 at any time incurred to finance discrete items of equipment not comprising an integral part of the Project that extend to, and are secured by, only the equipment being financed, as long as such indebtedness does not exceed the purchase price paid for such equipment;

(e) current accounts payable arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest and reserved against in accordance with GAAP); or

(f) reimbursement obligations with respect to letters of credit required to be issued to the District regarding handover and other reimbursement obligations with respect to letters of credit issued in connection with reserve requirements under the Financing Documents.

"Permitted Investments" means to the extent permitted by State law:

(a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) Investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) Investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000, including the Trustee or any of its affiliates;

(d) Investment agreements, including guaranteed investment contracts, repurchase agreements, deposit agreements and forward delivery agreements, that are obligations of an entity whose senior long term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated (at the time the investment is entered into), not lower than "A3" by Moody's or its equivalent from another Nationally Recognized Rating Agency, including the Trustee or any of its affiliates;

(e) Money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940 and (ii) are rated "AAA" by S&P and "Aaa" by Moody's, including any such fund to which the Trustee or any of its affiliates provides services as an investment advisor, custodian, subcustodian, investment manager, administrator and/or shareholder servicing agent, notwithstanding that (x) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (y) the Trustee collects fees for services rendered pursuant to the Indenture, which fees are separate from the fees received from such funds, and (z) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(f) Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, other deposit products, certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the Borrower, or bankers acceptances of depository institutions, including Trustee or any of its affiliates; and

(g) Investments in Subsidiaries.

"Permitted Security Interest" means:

(a) Any Security Interest arising by operation of law or in the ordinary course of business in connection with or to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety bonds or appeal bonds;

(b) Any mechanic's, materialmen's, workmen's, repairmen's, employees', warehousmen's, carriers' or any like lien or right of set-off arising in the ordinary course of business or under applicable law, securing obligations incurred in connection with the Project which are not overdue by more than thirty (30) days or are being contested in good faith;

(c) Any right of title retention in connection with the acquisition of assets in the ordinary course of business;

(d) Any Security Interest for taxes, assessments or governmental charges not yet due or being contested in good faith;

(e) Any Security Interest arising out of judgments or awards fully covered by Insurance or with respect to which an appeal or proceeding for review is being prosecuted, enforcement has been stayed or bonded and reserves have been established in accordance with GAAP;

(f) Any Security Interest created pursuant to or contemplated by the Financing Documents or to secure Bond Obligations;

(g) Any right of set-off arising under a Material Project Contract or Financing Document;

(h) Any other lien granted over assets with a value not exceeding \$500,000 (or its equivalent);

(i) Any other Security Interest securing Permitted Indebtedness described in clauses (b), (d) and (f) of the definition thereof;

(j) Any Security Interest incurred or deposit made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other forms of governmental insurance or benefits;

(k) Any Security Interest arising solely by virtue of any statutory or common law provision relating to banker's liens, rights to set-off or similar rights;

(l) Licenses or sublicenses of intellectual property granted in the ordinary course of business;

(m) Any other Security Interest approved in writing by the Owners of a majority in aggregate principal amount of the Bond Obligations;

(n) Any lien on the District's property or assets existing at the Closing Date; *provided* that (i) such lien shall not apply to any other property or asset of the Company and (ii) such lien shall secure only those obligations which it secures at the Closing Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(o) Any lien existing on any property or asset prior to the acquisition thereof by the Company or the District; *provided* that (i) such lien is not created in contemplation of or in connection with such acquisition, (ii) such lien shall not apply to any other property or assets of the Company and (iii) such lien shall secure only those obligations which it secures on the date of such acquisition and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof.

"Permitted Subordinated Debt" has the meaning given to it in clause (c) of the definition of Permitted Indebtedness.

"Persistent Condition" means Service Task Orders that are not resolved after the fourth (and each subsequent) 12-hour period occurring after the Service Task Order.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity, municipality, county, the District or any other person having separate legal personality.

"Personalty" means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures), exclusive of tenants' betterments, which are used now or in the future in connection with the construction, ownership, management or operation of Company's interest in the Commuter Rail Network or the Improvements or are located on the Company's interest in the Commuter Rail Network or the Improvements, and any operating agreements relating to the Company's interest in the Commuter Rail Network or the Improvements, and any surveys, plans and specifications and contracts and other agreements for design, architectural, engineering and construction services relating to the Company's interest in the Commuter Rail Network or the Improvements or for the supplying of labor or materials, and all other intangible property and rights relating to the construction, operation, management or leasing of, or used in connection with, the Company's interest in the Commuter Rail Network or the Improvement Rail Network or the Improvements, including all permits, licenses, approvals and consents relating to any activities conducted as of the date of the Leasehold Mortgages or thereafter on the Company's interest in the Commuter Rail Network.

"Pledge Agreement" means that certain Amended and Restated Membership Interest Pledge Agreement, dated as of December 1, 2020, between the Trustee and DTH, as pledgor, which amends and restates the Original Pledge Agreement.

"Pledged Collateral" means the security collateral pledged by DTH to the Trustee, and its successors and assigns, for the prompt irrevocable and indefeasible payment in full when due (whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date or otherwise) and performance of any and all of the Bond Obligations, as described in "SECURITY FOR THE BONDS—Membership Interest Pledge Agreement" herein.

"Pledged Membership Interest" means the limited liability company interests in the Company and all options, warrants and rights to purchase limited liability company interests in the Company and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof.

"Potential Distribution Date" means the third Business Day prior to the fifteenth calendar day of each of April, July, October and January.

"Potential Event of Default" means an event, which with the giving of notice or lapse of time would become an Event of Default under the Financing Documents.

"Principal Accounts" means the Principal Accounts of the Debt Service Fund established and created pursuant to the Indenture and described in "SECURITY FOR THE BONDS—Indenture" herein.

"Principal Payment Date" means any date on which Principal Payments are due.

"Principal Payments" means, with respect to a payment date, the principal (including the principal component of the Redemption Price due in connection with any mandatory redemption payment on any Bond) due or to become due prior to the next succeeding Interest Payment Date.

"Project" means the Eagle P3 Project.

"Project Accounts" means the Lockbox Project Accounts created and established pursuant to the Lockbox Account Agreement and the Indenture Project Accounts created and established pursuant to the Indenture.

*"Project Agreements"* means: (a) the Concession Agreement, (b) the Design Build Contract, (c) the O&M Contract, (d) the Rolling Stock Supply Contract, and (e) with respect to the Design Build Contract, the Design Build Subcontract or with respect to the O&M Contract, the Interface Agreement.

"Project Collateral" means all "Collateral" referred to in each Security Document.

"Project Contractors" means the Design Build Contractor, the Rolling Stock Supplier and the O&M Contractor.

"Project Implementation Costs" means the total costs, expenses and fees that have been incurred by or on behalf of the Company in connection with the design, development, financing, construction, operation and maintenance of the Commuter Rail Network and the Rolling Stock, including funds drawn but not expended for the purpose of design, development, construction, operation and maintenance of the Commuter Rail Network and the Rolling Stock.

"Project Requirements" means the Final Project Design, the Scope Document, the Design, Construction and Rolling Stock Requirements, the O&M Specifications, the O&M Standards, the Third Party Agreements, all Permits, certain environmental, health, safety and security requirements as set forth in the Concession Agreement, all other Applicable Requirements, including the District Permits, terms of insurance policies and other requirements and obligations of the Company and/or the Design Build Contractor, as the case may be, specified or referred to in the Concession Agreement, the Design Build Contract or in other Contract Documents.

"Project Revenues" means the aggregate amount of any payments to the Company pursuant to the Concession Agreement, third party revenues, the interest on any Project Accounts received by the Company and all amounts payable to the Company (but not the District) as liquidated damages under contracts, in each case, to the extent the same relate to the Project; *provided* that such revenues shall exclude any Insurance proceeds required to be deposited in an escrow account pursuant to the Concession Agreement.

"Project Site" means the site of or the right-of-way for the Eagle P3 Project.

"Project Third Party" means each counterparty to a Third Party Agreement.

*"Projected Rectification Costs"* mean the costs determined by a third party expert appointed jointly by the parties as described in *"PAYMENTS UNDER THE CONCESSION AGREEMENT — Payment of Termination Amounts"* herein.

*"Property"* means all of Company's present and future right, title and interest in and to all of the following items but only to the extent such present and future right, title and interest is granted and made available by the District to the Company pursuant to the terms and conditions of the Concession Agreement:

- (a) the Concession Agreement;
- (b) the Commuter Rail Network;
- (c) the Improvements;
- (d) the Fixtures;
- (e) the Personalty;
- (f) the Rolling Stock;

(g) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting Company's interest in the Commuter Rail Network or the Improvements, or both, and all such rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(h) all proceeds paid or to be paid to or on behalf of the Company by any insurer of the Commuter Rail Network, the Improvements, the Fixtures, the Personalty, the Concession Agreement or any other part of the Property, whether or not the Company obtained the insurance pursuant to Beneficiary's requirement;

(i) all awards, payments and other compensation made or to be made to or on behalf of the Company by any municipal, state or federal authority with respect to the Company's interest in the Commuter Rail Network, the Improvements, the Fixtures, the Personalty, the Concession Agreement or any other part of the Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Company's interest in the Commuter Rail Network, the Improvements, the Fixtures, the Personalty, the Concession Agreement or any other part of the Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(j) all contracts, options and other agreements to the extent assignable by the Company, for the sale of the Commuter Rail Network, the Improvements, the Fixtures, the Personalty, the Concession Agreement or any other part of the Property entered into by the Company now or in the future, including cash or securities deposited to secure performance by parties of their obligations thereunder;

(k) all proceeds from the conversion, voluntary or involuntary, of any of the above in clauses (a) through (j) into cash or liquidated claims, and the right to collect such proceeds;

(l) all Rents and Leases;

(m) all earnings, royalties, accounts receivable, issues and profits from the Company's interest in the Commuter Rail Network, the Improvements, the Concession Agreement or any other part of the Property;

(n) all refunds or rebates of impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Deed of Trust is dated);

(o) all tenant security deposits which have not been forfeited by any tenant under any Lease;

(p) all names under or by which any of the above Property is operated or known, and all trademarks, trade names, and goodwill relating to any of the Property; and

(q) all minerals, crops, timber, trees, shrubs, plants, flowers and landscaping features or materials located on, under or above the Commuter Rail Network as of the date of the Leasehold Mortgages or thereafter.

"Qualified Substitute Concessionaire" means a person who:

(a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Company under, the Concession Agreement;

(b) has the resources available to it (including committed financial resources) or is otherwise reasonably likely to have the ability to raise resources that are sufficient to enable it to perform the obligations of the Company under the Concession Agreement; and

(c) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Company under the Concession Agreement.

"Qualifying Institution" means any insurance company or financial institution lawfully operating in the State of Colorado (or, with respect to the issuer of the O&M Letter of Credit, the State of New York) with a minimum credit rating of "A" from Standard & Poor's Rating Services, "A2" from Moody's Investors Service, Inc. and/or "A" from Fitch Ratings, Inc.

"Qualifying Insurer" means any insurer of recognized financial responsibility and admitted in the State of Colorado which holds a current policyholders alphabetic and financial size category rating of "A:VIII" or higher according to Best's Insurance Reports (or if not rated by Best's Insurance Reports, with a claims-paying ability rating from Standard & Poor's of "A" or higher).

*"Railroad Agreement"* means any agreement entered into between the District and any Heavy Rail Operator in relation to the Eagle P3 Project.

*"Railroad Rehabilitation and Infrastructure Financing Program"* means the federal program described in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" herein.

"*Reasonable Efforts*" means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take; *provided* that the relevant Party shall not be required to expend funds except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses). "Rebate Fund" means the Rebate Fund established and created pursuant to the Indenture and described in "SECURITY FOR THE BONDS—Indenture" herein.

"Record Date" means the close of business on the last day of the month immediately preceding the month of each Interest Payment Date.

*"Record Documents"* mean detailed drawings, as-builts, reports, calculations, specifications, schedules, notes and other descriptive material in which the configuration of final design, assembly, construction, hardware and software of the Eagle P3 Project are documented.

"Records of Decision" or "ROD" means each of:

(a) the Record of Decision for East Corridor and Commuter Rail Maintenance Facility Dated November 6, 2009; and

(b) the Record of Decision for Gold Line and Commuter Rail Maintenance Facility Dated November 2, 2009.

*"Redemption Account"* means the Redemption Account of the Debt Service Fund created by and designated as such in the Indenture and described in "SECURITY FOR THE BONDS—Indenture" herein.

*"Redemption Moneys"* mean the money deposited with the Trustee to pay the Redemption Price of all the Bonds called for redemption.

*"Redemption Price"* means the amount due on a Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions applicable to such Bond. Such term does not include the principal and interest due on the term Bonds on the dates such Bonds are to be redeemed in accordance with a mandatory redemption schedule set forth in the Indenture.

"Refinancing" means, with respect to the Concession Agreement:

(a) any amendment, variation, novation, supplement or replacement of any Designated Credit Agreement;

(b) the grant of any waiver or consent, or the exercise of any similar right, under any Designated Credit Agreement;

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Designated Credit Agreement; or the creation or granting of any other form of benefit or interest in either the Designated Credit Agreement; or the contracts, revenues or assets of the Company whether by way of security or otherwise but excluding any security agreements which constitute Designated Credit Agreements and any participations or transfers (whether by novation or otherwise) among Lenders only; or

(d) any other arrangement put in place by the Company or another Person that has an effect that is similar to any of (a)-(c) above or that has the effect of limiting the Company's ability to carry out any of (a)-(c) above.

"Reinstatement Amount" means an estimate of the cost to the Company to perform the Reinstatement Work in the proposed manner.

*"Reinstatement Work"* means the maintenance or other work of renewal, reconstruction, repair or reinstatement to be carried out by the Company in respect of the Concessionaire-operated Components prior to the Expiry Date in order to satisfy the Handover and Reinstatement Work Requirements.

"Release" means any new or historical spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, migrating, abandoning or discarding.

"Relevant Authority" means the government of the United States of America, the State of Colorado, the cities and counties within or forming part of the District and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State of Colorado or the cities and counties within or forming part of the District.

"Relevant Incident" means the damaging or destruction of any part of the Concessionaire-operated Components.

"Relief Event" means, among other things, any of the following events or circumstances and any combination of the following events and circumstances:

- (a) any Unidentified Archaeological Remains discovered by the Company at any Site;
- (b) any Unidentified Environmental Condition encountered by the Company at any Site;
- (c) any Unidentified Geological Obstruction encountered by the Company at any Site;
- (d) any Unidentified Endangered Species encountered by the Company at any Site;

(e) the implementation of a Change in accordance with the Concession Agreement to the extent provided in the Concession Agreement or the implementation by the Company of any betterment or alternative solution pursuant to a Work Order;

(e) any willful misleading of the Company as described in the Concession Agreement;

(f) a violation of Applicable Requirements by the District as agreed by the District or, if the District disputes the occurrence of a violation of Applicable Requirements by the District, as evidenced by a final unappealable ruling of court of law in a competent jurisdiction or of an arbitral tribunal in a binding arbitration (as the case may be), or otherwise than as contemplated in the Concession Agreement and/or required by the Applicable Requirements;

(g) the discovery of any Unidentified Utility as described in the Concession Agreement;

(h) any change in voltage of the primary power supply drawn from the Utility transmission network as set forth in the Concession Agreement;

(i) a determination in accordance with the Dispute Resolution Procedures relating to a Dispute under the Concession Agreement that the District conditioned approval (including by way of rejection) of the Contract Data on comments and/or amendments that were not necessary for the Contract Data to comply with the applicable requirements of the Concession Agreement;

(j) a determination in accordance with the Dispute Resolution Procedures relating to a dispute under the Concession Agreement that a proposed amendment, modification, variation or waiver to the Design Build Contract or the O&M Contract, as applicable, was not a material amendment;

(k) a determination in accordance with the Dispute Resolution Procedures, relating to a Dispute under the Concession Agreement that the District's actions under that Agreement were attributable to or necessitated by any breach by the District of its obligations under the Concession Agreement;

(l) (i) the imposition by any Relevant Authority on the Company's possessory interest in the Eagle P3 Project of any ad valorem property tax or possessory interest property tax under the Laws of the State of Colorado or (ii) the imposition by any Relevant Authority of any sales or use tax on construction and building materials, equipment, improvements and other property (including tangible personal property) that will be integrated into the Eagle P3 Project and owned by the District (as, or as part of, without exclusion, the Commuter Rail Projects, DUS Systems, the CRMF and the Rolling Stock); but specifically excluding materials, equipment, improvements and other property (including tangible personal property) relating to the Eagle P3 Project that will be (A) owned by the Company, the Project Contractors or Subcontractors or (B) leased by the Company, the Project Contractors or Subcontractors from Persons other than the District;

(m) any interruption or interference to the Commuter Rail Services caused by the procurement, design, operation or maintenance of any Other RTD Project, including the procurement, design and construction of any Concessionaire operated expansion, in each case undertaken by or on behalf of the District (but only to the extent not undertaken by the Company), otherwise than as contemplated in the Concession Agreement and/or required by the Applicable Requirements;

(n) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Relevant Authority of competent jurisdiction under applicable Law, which issuance is solely as a result of the District's actions or omissions (and not the Company's actions or omissions), which injunction, order, restraint or prohibition materially affects the District's or the Company's performance under the Concession Agreement;

(o) the execution by the District of (i)(A) any Utility Relocation Agreement after the Final Proposal Due Date on terms not consistent with the copy of such agreement attached to the Concession Agreement; (B) any inter-governmental agreement after the Final Proposal Due Date on terms not consistent with the copy of such agreement attached in draft form in Annex 1 to the Concession Agreement; (C) any Railroad Agreement after the Final Proposal Due Date on terms not consistent with the copy of such Railroad Agreement attached in draft form to the Concession Agreement; or (D) any Railroad Agreement identified in the Concession Agreement after the Final Proposal Due Date on terms not consistent with the terms of the agreement or draft form of agreement referenced therein, as applicable; or (ii) any Third Party Agreement after the Final Proposal Due Date other than the agreements (including the agreements in draft form) attached to the Concession Agreement;

(p) (i) (any failure by the District or any third party contractor acting on the District's behalf to complete any RTD Retained Environmental Work by the completion date for such Environmental Clean-up Work set forth in the relevant Environmental Condition Clean-up Report delivered by the Company to the District or (ii) any material interruption or interference with the Company's performance of its obligations under the Concession Agreement caused by the District or any third party contractor acting on the District's behalf in performing any RTD Retained Environmental Work; and

(q) the approval of a Voluntary Clean-Up Application and Materials Management Plan by the Colorado Department of Public Health and Environment in form and substance materially different from the draft copy of such plan attached to the Concession Agreement;

but, in each case, only to the extent that:

(i) such event or circumstance does not result from and is not contributed to by any breach by the Company of its obligations under the Concession Agreement or any of the other Project Agreements or any negligent act or omission of the Company;

(ii) such event or circumstance has arisen notwithstanding the Company complying with its obligations under the Concession Agreement, and in accordance with its obligations under the Concession Agreement; and

(iii) the Company has complied with its obligations regarding mitigation in the case of a Relief Event.

*"Renewal Work"* means any lifecycle maintenance, repair, renewal, reconstruction or replacement work of any portion or component of the Concessionaire-operated Components, as applicable, of a type that is not normally included as an annually recurring cost in commuter rail line maintenance and repair budgets.

*"Renewal Work Account"* is the account established by the O&M Contractor on or prior to the date occurring one (1) month prior to the first scheduled element of Renewal Work to be performed in accordance with the Renewal Work Budget and Schedule.

"*Renewal Work Budget and Schedule*" means the budget delivered by the O&M Contractor to the Company for Renewal Work costs (expressed in 2020 dollars) and the schedule for each element of Renewal Work to be completed in accordance with the O&M Contract during the Operating Period, including all Renewal Work relating to handover obligations.

"*Renewal Work Payment*" means the monthly payment by the Company based on the invoice submitted by the O&M Contractor for the fixed amount set out in the Renewal Work Budget and Schedule for that calendar month that may be adjusted to reflect any Modification to the Renewal Work Budget and Schedule resulting from amendments to the calculation of Service Payments pursuant to the partnering process described in the O&M Contract.

*"Renewal Works Deficiency"* means the difference between the face amount of the Renewal Works Letter of Credit required pursuant to the O&M Contract and the face amount of the Renewal Works Letter of Credit if the O&M Contractor fails to provide a Renewal Works Letter of Credit in the amount required pursuant to the O&M Contract.

"Renewal Works Letter of Credit" means the letter of credit provided by the O&M Contractor to the Company issued by a Qualifying Institution and in a form acceptable to the Company, with a stated expiration of not earlier than one year from the issuance date, in a stated amount equal to 100% of the amount calculated in accordance with the following: the amount equal to (a) the costs set forth in the Forecast Renewal Work Schedule for such year <u>less</u> (b) the costs set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars) <u>less</u> (c) the amount on deposit in the Renewal Work Account as at January 1 of such year, if a positive number, exceeding the greater of (i) \$1,000,000 or (ii) ten percent (10%) of the cost of Renewal Works set forth in the Renewal Work Budget and Schedule for such year forth in the Renewal Work Budget and Schedule for such year forth in the Renewal Work Budget and Schedule for such year.

"Renewal Works Reserve Account" means the Renewal Works Reserve Account created by and designated as such in the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—Renewal Works Reserve Account" herein.

"*Rents*" means all rents (whether from residential or nonresidential space), revenues and other income of Company's interest in the Commuter Rail Network or the Improvements payable to Company (excluding any rent payable by Company under the Concession Agreement), including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Property, if any, whether now due, past due, or to become due, and deposits forfeited by tenants.

*"Required Security Amount"* means \$26,763,286, adjusted annually during each year of the term beginning in calendar year 2021 by the percentage change in the Inflation Index from that for the immediately preceding calendar year. The O&M Letter of Credit in place as of the date hereof is \$.

"Reserved Rights" means amounts payable to the Issuer under certain sections of the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed).

*"Restoration Plan"* means the plan prepared by the Company for the carrying out of the work necessary to repair, reinstate or replace the parts of the Affected Portion which have been damaged or destroyed.

*"Restoration Work"* means the work necessary to repair, reinstate or replace the parts of the Affected Portion which have been damaged or destroyed.

"Restricted Payment Conditions" means, on or with effect from any applicable date of determination, that:

(a) the amount on deposit in the Debt Service Reserve Account is sufficient to satisfy the Debt Service Reserve Requirement, and the Renewal Works Deficiency is on deposit in the Renewal Works Reserve Account;

(b) the Total DSCR as of the most recent Calculation Date is equal to or greater than 1.10:1.00;

(c) no Event of Default or Potential Event of Default pursuant to the terms of the Bonds, and no Concessionaire Termination Event pursuant to the terms of the Concession Agreement, has occurred and is continuing or would exist as a result of the making of the payment; and

(d) if a Force Majeure Event has occurred and is continuing, the District has not failed to pay and has not indicated in writing to the Company that it has no obligation to pay the Service Payment under Section 39.4 or Section 39.5 of the Concession Agreement.

*"Revenue Account"* means the Revenue Account created and designated as such by the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—*Revenue Account"* herein.

*"Revenue Account Transfer Certificate"* means the Revenue Account Transfer Certificate substantially in the form of the Revenue Account Transfer Certificate attached to the Lockbox Account Agreement and described in "ACCOUNTS AND FLOW OF FUNDS—Description of Lockbox Project Accounts Under the Lockbox Account Agreement—*Revenue Account"* herein.

*"Revenue Service Commencement Certificate"* means, with respect to each Commuter Rail Service, the "Revenue Service Commencement Certificate" issued by the Independent Engineer pursuant to the Concession Agreement certifying that the Company has demonstrated to the Independent Engineer's satisfaction that the Revenue Service Commencement Requirements (as defined in the Concession Agreement) have been satisfied.

"Revenue Service Commencement Date" means for (a) the East Corridor, April 22, 2016, (b) the Gold Line, April 26, 2019, and (c) NWES, July 25, 2016.

"*RFP*" means the Request for Proposals No. 18FH012 issued by the District on September 30, 2009 (as subsequently amended by addenda thereto).

*"Rolling Stock"* means rolling stock necessary to support the service requirements for Commuter Rail Services on the East Corridor and on the Gold Line and Northwest Rail Electrified Segment, in each case, in accordance with the O&M Specifications.

*"Rolling Stock Availability"* means the availability of the Rolling Stock for the provision of the Commuter Rail Services as determined in accordance with the Concession Agreement.

*"Rolling Stock Expenditures"* means any expenditure required to be funded by the Company pursuant to its Rolling Stock repair and replacement obligations under the Concession Agreement.

*"Rolling Stock Supply Contract"* means the contract for the supply of the Rolling Stock entered into between the Design Build Contractor and the Rolling Stock Supplier.

"Rolling Stock Supplier" means Hyundai Rotem USA Corp. and its successors, assigns and replacements under the Rolling Stock Supply Contract.

*"Rolling Stock Warranty Period"* means each one of the following: a warranty period of 15 years from Final Acceptance for Car Structure and truck frame, and for everything else that is part of the work, a warranty period of three years from Final Acceptance.

*"RTD Adopted Budget"* means the "budget" for a "budget year" (each term as defined in the Local Government Budget Law of Colorado) prepared and adopted by the Board in accordance with the Local Government Budget Law of Colorado (C.R.S. 29-1-101 *et seq.*).

*"RTD Appropriation Obligations"* means any and all payment obligations of the District under and pursuant to the Concession Agreement (except for the obligation to pay the TABOR Portion and any Additional TABOR Portion).

*"RTD Default Amount"* means the aggregate, calculated at the Termination Date or such date as required under the Concession Agreement, as applicable, of:

(a) the Lenders' Liabilities as at that date;

(b) an amount equal to the Equity Market Value less the documented costs (including professional fees) expended to conduct the independent third party expert appraisal described in the definition of Equity Market Value;

(c) any Subcontractor Breakage Costs; and

(d) any reasonable and verifiable costs and expenses of enforcement or protection or preservation of security properly and incurred by the Lenders from the Termination Date to the date of payment by the District.

*"RTD Pledged Revenues"* means (a) any RTD Sales Tax Revenues remaining on deposit each month in the Sales Tax (0.6%) Fund and the Sales Tax Increase (0.4%) Fund with the RTD Trustee pursuant to the Senior RTD Documents after all applications, deposits and payments required to be made from the Sales Tax (0.6%) Fund and the Sales Tax Increase (0.4%) Fund under the Senior RTD Documents, have been made, but prior to the distribution of any such remaining amounts by the RTD Trustee pursuant to the DUSPA/RTD Funding Agreement or to the District and (b) Additional Sales Tax revenues that have been pledged by the District (in its sole discretion) to secure the payment of Senior RTD Debt in respect of which the District has provided written notice to the Company and the RTD Trustee and that are available to the District following the application of such revenues are pledged to pay Senior RTD Debt, but prior to the distribution of such Additional Sales Tax revenues are pledged to pay Senior RTD Funding Agreement or to the District.

*"RTD Pricing Conditions"* mean the Incurred Costs claimed by the Company from the District that have been incurred in compliance with 48 CFR Part 31 (Federal Acquisition Regulation Contract Cost Principles and Procedures) (the *FAR*) and FTA Circular 4220.1F Part VI (Third Party Contracting Guidance; Procedural Guidance for Open Market Procurements) that are in accordance with the Concession Agreement.

*"RTD Proposed Change"* means, with respect to the Concession Agreement, any change or alteration requested in writing by the District to the Company to (a) the Final Project Design, the Scope Document or the O&M Specifications, (b) require the Company to operate and maintain any Concessionaire-operated Expansion, or (c) require the Company as part of a regularly scheduled or occurring service to dispatch Heavy Rail Movements on a portion of the Commuter Rail Network other than the DUS Rail Segment.

*"RTD Retained Environmental Work"* means Environmental Clean-up Work that the District elects to carry out or elects to cause a third party contractor to carry out, pursuant to Section 12.2(i) of the Concession Agreement.

*"RTD Sales Tax"* means the sales tax levied uniformly throughout the District Sales Tax Area at a rate of 1.0% (consisting of a sales tax levied at the rate of 0.6% and a sales tax increase levied at the rate of 0.4% that was approved at the 2004 election to finance the FasTracks Plan) upon every transaction or other incident with respect to which a sales tax is levied by the State of Colorado pursuant to the provisions of Section 39 26-101 *et seq.*, Colorado Revised Statutes, and pursuant to the Act.

*"RTD Sales Tax Revenues"* means the proceeds received by the District, or by the RTD Trustee as assignee of the District, from the levy and collection of the Sales Tax and any Additional Sales Tax revenues pledged as RTD Pledged Revenues.

"RTD Termination Events" means any of the following events or circumstances:

(a) other than as a result of any failure to appropriate (by inclusion in its annual or any interim budget) monies for the purposes of RTD Appropriation Obligations as described in the Concession Agreement, the District fails to pay any undisputed amount within 10 days after the due date;

(b) the Board fails, by the end of a Fiscal Year, to make an appropriation (by inclusion in its annual or any interim budget) of monies for the purposes of RTD Appropriation Obligations (other than any Applicable Termination Amount) pursuant to the Concession Agreement in an amount sufficient to fund the RTD Appropriation Obligations (other than any Applicable Termination Amount) estimated to fall due, or that have fallen due, during such Fiscal Year.

(c) a Discriminatory Change in Law or a Change in Law exceeding any of the thresholds set out in the Concession Agreement, but only where the District is not providing compensation to the Company to compensate it for the effects of the Discriminatory Change in Law or Change in Law, as required by the terms of the Concession Agreement; and

(d) the obligations of the District under the Concession Agreement are or become illegal, unenforceable, void or voidable, and as a result, the District is or becomes unable to perform its material obligations under the Concession Agreement.

"*RTD Trustee*" means The Bank of New York Mellon Trust Company, N.A., as trustee, or any successor trustee under the Senior RTD Documents.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

*"S&P"* means S&P Global Ratings, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"Sales Tax" means RTD Sales Tax.

"Sales Tax (0.6%) Fund" means the "Regional Transportation District Sales Tax (0.6%) Fund" created in the 2006 FasTracks Indenture and maintained by the RTD Trustee.

*"Sales Tax Increase (0.4%) Fund"* means the "Regional Transportation District Sales Tax Increase (0.4%) Fund" created in the 2006 FasTracks Indenture and maintained by the RTD Trustee.

"Sales Tax Funds" means collectively the Sales Tax (0.6%) Fund and the Sales Tax Increase (0.4%) Fund.

"Scope Document" means the document describing the Design, Construction and Rolling Stock Requirements of the Concession Agreement.

"Scope of Services" means any and all services performed by the O&M Contractor that are required or are appropriate in connection with the operations and maintenance of the Project, including all obligations set forth in the O&M Contract in accordance with the provisions of the O&M Contract, including the O&M Specifications, and shall provide all materials, equipment, software, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to perform such services.

"Secured Accounts" mean the Account Collateral and all accounts and general intangibles (including payment intangibles) of the Company constituting a right to the payment of money, whether or not earned by performance, including all moneys due and to become due to the Company in repayment of any loans or advances,

in payment for goods (including Inventory and Equipment) sold or leased or for services rendered, in payment of tax refunds, insurance refund claims and all other insurance claims and proceeds, tort claims, securities and other investment property.

"Secured Parties" means the Trustee, the Owners of the Series 2020 Bonds and the Owners of the Additional Parity Bonds, if any.

"Securities" means bonds, notes, certificates, warrants, leases, contracts or other financial obligations or securities issued or executed by the District and payable in whole or in part from a lien on the RTD Sales Tax Revenues.

"Securities Accounts" means the Lockbox Project Accounts.

"Securities Act" means the federal Securities Act of 1933, as amended.

*"Securities Intermediary"* means The Bank of New York Mellon Trust Company, N.A. in its capacity as securities intermediary on behalf of the Secured Parties under the Lockbox Account Agreement.

"Security Agreement" means that certain Amended and Restated Security Agreement, dated as of December 1, 2020, between the Company and the Trustee, which amends and restates the Original Security Agreement.

*"Security Documents"* means the Security Agreement, the Leasehold Mortgages, the Pledge Agreement, the Lockbox Account Agreement, the Direct Agreements and each other document or instrument from time to time pursuant to which a lien or security interest is granted or perfected in favor of the Trustee or Agent Bank (as defined in the Concession Agreement) by the Company in respect of the Financing Documents for the benefit of the Secured Parties.

*"Security Interest"* means: (a) a mortgage, pledge, lien charge, assignment, hypothecation, security interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or (b) any agreement to create or give any arrangement referred to in clause (a) of this definition.

*"Senior Credit Facility Obligations"* means any Credit Facility Obligations payable from all or a portion of the RTD Sales Tax Revenues on a parity with the Senior RTD Debt.

*"Senior Financial Products Agreement"* means any Financial Products Agreement pursuant to which (a) Financial Products Payments are payable from a lien on all or a portion of the RTD Sales Tax Revenues on a parity with the Senior RTD Debt and (b) Financial Products Termination Payments are payable from a lien on all or a portion of the RTD Sales Tax Revenues which is subordinate to the TABOR Portions and the Additional TABOR Portions.

*"Senior RTD Debt"* means all bonds, notes, certificates, warrants, leases, contracts or other financial obligations or securities issued or executed by the District and secured in whole or in part by a lien on the RTD Sales Tax Revenues that is senior or superior to the lien thereon created pursuant to the sections of the Concession Agreement relating to the TABOR Portion and compensation following termination of the Concession Agreement.

*"Senior RTD Debt Trustee"* means The Bank of New York Mellon Trust Company, N.A., as trustee for the benefit, respectively, of the owners of both the 0.6% Senior Debt and the FasTracks Bonds.

*"Senior RTD Documents"* means, collectively: (a) Resolution No. 9, Series 1977 of RTD, as supplemented by the following resolutions of RTD: (i) Resolution No. 13, Series 1985, (ii) Resolution No. 2, Series 1988, (iii) Resolution No. 6, Series 1990, (iv) Resolution No. 5, Series of 1992, (v) Resolution No. 9, Series of 1993, (vi) Resolution No. 14, Series of 1997, (vii) Resolution No. 20, Series of 2000, (viii) Resolution No. 13, Series of 2001, (ix) Resolution No. 24, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series Of 2002, (xi) Resolution No. 6, Series of 2001, (x) Resolution No. 26, Series Of 2002, (xi) Resolution No. 6, Series Of 2001, (x) Resolution No. 26, Series Of 2002, (xi) Resolution No. 6, Series Of 2002, Series Of 2002

2003, (xii) Resolution No. 04, Series of 2004, (xiii) Resolution No. 01, Series of 2005, (xiv) Resolution No. 003, Series of 2007, (xv) Resolution No. 04, Series of 2008, and (xvi) Resolution No. 28, Series of 2009; (b) an Indenture between the District and the RTD Trustee, successor in interest to BNY Western Trust Company, as Trustee, dated August 1, 2001, as amended, (c) the 2006 FasTracks Indenture and (d) the 2007 FasTracks Indenture, in each case (a), (b), (c) and (d) as such resolutions and indentures may be amended or supplemented from time to time, and any other resolutions, indentures of trust, leases, contracts, obligations or other agreements which may be entered into by the District in the future to incur, issue or secure other Senior RTD Debt.

*"Series 2010 Bonds"* mean the Regional Transportation District (Colorado) Tax-Exempt Private Activity Revenue Bonds (Denver Transit Partners Eagle P3 Project), Series 2010, issued pursuant to the terms of the Original Indenture.

*"Series 2010 Interest Sub-Account"* means the interest sub-account with respect to the Series 2010 Bonds established within the Original Lockbox Account Account.

"Series 2010 Loan" means the loan made by the Issuer to the Borrower pursuant to the Original Loan Agreement.

*"Series 2010 Principal Sub-Account"* means the principal sub-account with respect to the Series 2010 Bonds established within the Original Lockbox Account Account.

"Series 2010 Refinancing" means the issuance of the Series 2020A Bonds and the Series 2020B Bonds by the Issuer, the proceeds of which will fund the Series 2020 Loan to the Borrower, which Series 2020 Loan will be used to (a) repay, along with other funds available to the Company, the Series 2010 Loan made by the Issuer to the Borrower under the Original Loan Agreement and the Issuer shall apply such loan repayment to the redemption and repayment in full of the outstanding Series 2010 Bonds and (b) solely with respect to the proceeds of the Series 2020B Bonds, pay or reimburse the prior payment of the Costs of Issuance of such Series 2020 Bonds.

"Series 2020 Bonds" means, collectively, the Series 2020A Bonds and the Series 2020B Bonds.

"Series 2020 Cost of Issuance Account" means the Series 2020 Cost of Issuance Account created by and designated as such in Section 5.1 of the Indenture.

"Series 2020 Issuer Loan Agreement" means the Loan Agreement.

"Series 2020 Interest Sub-Accounts" means, collectively, the Series 2020A Interest Sub-Account and the Series 2020B Interest Sub-Account.

*"Series 2020 Loan" means* the loan made by the Issuer to the Company on the Closing Date in an amount equal to proceeds of the Series 2020 Loan pursuant to the Series 2020 Issuer Loan Agreement.

"Series 2020 Principal Sub-Accounts" means, collectively, the Series 2020A Principal Sub-Account and the Series 2020B Principal Sub-Account.

*"Series 2020A Bonds"* means the Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A.

"Series 2020A Interest Account" means the Series 2020A Interest Account created by and designated as such in Section 5.1 of the Indenture.

"Series 2020A Interest Sub-Account" means the interest sub-account with respect to the Series 2020A Bonds established within the Revenue Account.

*"Series 2020A Principal Account"* means the Series 2020A Principal Account created by and designated as such in Section 5.1 of the Indenture.

*"Series 2020A Principal Sub-Account"* means the principal sub-account with respect to the Series 2020A Bonds established within the Revenue Account.

*"Series 2020A Term Bonds"* means the Series 2020A Bonds maturing on July 15, 2034, July 15, 2035, July 15, 2036, July 15, 2037, July 15, 2038, July 15, 2039 and July 15, 2040.

*"Series 2020B Bonds"* means the Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B.

"Series 2020B Interest Account" means the Series 2020B Interest Account created by and designated as such in Section 5.1 of the Indenture.

"Series 2020B Interest Sub-Account" means the interest sub-account with respect to the Series 2020B Bonds established within the Revenue Account.

*"Series 2020B Principal Account"* means the Series 2020B Principal Account created by and designated as such in Section 5.1 of the Indenture.

*"Series 2020B Principal Sub-Account"* means the principal sub-account with respect to the Series 2020B Bonds established within the Revenue Account.

"Service Payments" means the payment payable by the District to the Company as determined in accordance with the Concession Agreement and described in "PAYMENTS UNDER THE CONCESSION AGREEMENT—Service Payments."

*"Service Task Orders"* or *"STOs"* are orders issued by the Company if the standards set out in the O&M Specifications of the Concession Agreement are not met.

"Services" means any and all services performed by the O&M Contractor that are required or are appropriate in connection with the operations and maintenance of the Project, including all obligations set forth in the O&M Contract, in accordance with the provisions of the O&M Contract, including the O&M Specifications, with respect to which the O&M Contractor will provide all materials, equipment, software, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to perform such services.

"Shareholder" means a holder of any membership interest, or any other security giving the right to subscribe for or convert into a membership interest, in the Company.

*"Shareholder Loans"* means, at any time, any subordinated debt instruments entered into by the Company with its Affiliates pursuant to a subordination agreement (or other agreement containing subordination terms).

"Sites" means, collectively, (a) the East Corridor Site and the CRMF Site, (b) the Gold Line Site and the Northwest Rail Electrified Segment Site and (c) the DUS Rail Segment Site, and each of (a), (b) and (c), individually, a "Site."

*"Special Events Adjustments"* means the adjustment pursuant to which the District compensates the Company for the provision of commuter rail revenue service in connection with special events implemented by the Company in agreement with the District in accordance with the Concession Agreement.

"Special Record Date" means a special date fixed to determine the names and addresses of Owners of Bonds for purposes of paying defaulted interest on Bonds in accordance with the Indenture.

"Specified Requirements" means certain requirements as set forth in the Concession Agreement with which the Eagle P3 Project must comply and in accordance with which the Company must perform its obligations and (where relevant) must require each Project Contractor and their respective Subcontractors to perform their respective obligations under the Concession Agreement, the other Project Agreements and the Subcontracts. "Sponsors" means Fluor, John Laing and Aberdeen, and each of their respective successors and assigns.

"Standard Life Aberdeen" means Standard Life Aberdeen plc.

"State" means the state of Colorado.

*"Station Availability"* is a part of the Availability Ratio as defined in "PRINCIPAL PROJECT AGREEMENTS—Concession Agreement" herein.

*"STOP Points"* mean the assessments against the Company for failure to achieve specified levels of Availability (train and station availability and on-time performance) as discussed in *"PRINCIPAL PROJECT AGREEMENTS—Interface Agreement"* herein.

"Subcontract" means any contract (at any tier) entered into by the Company, a Project Contractor or a Subcontractor with one or more third parties directly in connection with the carrying out of the Work or the operation or maintenance of the Concessionaire-operated Components or any of the Company's other obligations under the Concession Agreement and the other Project Agreements, as amended or replaced from time to time in accordance with the Concession Agreement.

"Subcontractor" means:

(a) with respect to the Concession Agreement, any third party, other than the Concessionaire or the Project Contractors, that enters into a Subcontract (including the Material Subcontractors); or

(b) with respect to the Design Build Contract and the O&M Contract, a vendor, supplier, materialman, consultant or subcontractor of any tier providing equipment, materials or services directly or indirectly to the Design Build Contractor in connection with the Work or to the O&M Contractor in connection with the Services, as the case may be.

*"Subcontractor Breakage Costs"* means Losses that have been or will be reasonably and properly incurred by the Company under a Project Agreement as a direct result of the termination of the Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(a) the Losses are incurred in connection with the Eagle P3 Project and in respect of the provision of services or the completion of Work required to be provided or carried out, including:

(i) any materials or goods ordered or Subcontracts placed that cannot be cancelled without such Losses being incurred;

(ii) any expenditure incurred in anticipation of the provision of services or the completion of Work in the future; and

(iii) the cost of demobilization including the cost of any relocation of the Equipment;

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

(c) the Company and the relevant Project Contractor or Subcontractor have each used their Reasonable Efforts to mitigate the Losses.

*"Subordinate Credit Facility Obligations"* means any Credit Facility Obligations payable in whole or in part from the RTD Sales Tax Revenues and having a lien on all or any portion of the RTD Sales Tax Revenues which is subordinate to the lien thereon of the TABOR Portions and the Additional TABOR Portions.

"Subordinated Debt" means at any time any subordinated debt instruments entered into by the Company (other than Shareholder Loans) pursuant to a subordination agreement (or other agreement containing subordination terms) and which have been verified in advance in writing by the District in accordance with the Concession Agreement as consistent in all material respects with the Financial Model, including with respect to the assumptions related thereto.

*"Subordinate Financial Products Agreement"* means any Financial Products Agreement pursuant to which Financial Products Payments are payable from a lien on all or any portion of the RTD Sales Tax Revenues that is subordinate to the lien thereon of the TABOR Portions and the Additional TABOR Portions. Any Financial Products Termination Payment required under any Subordinate Financial Products Agreement shall have a lien on all or any portion of the RTD Sales Tax Revenues that is subordinate to the lien thereon of the RTD Sales Tax Revenues that is subordinate to the lien thereon of the RTD Sales Tax Revenues that is subordinate to the lien thereon of the TABOR Portions and the Additional TABOR Portions.

*"Subordinate Lien Bonds"* means any Securities payable in whole or in part from the RTD Sales Tax Revenues and having a lien on all or any portion of the RTD Sales Tax Revenues which is subordinate to the lien thereon of the TABOR Portions and the Additional TABOR Portions but does not include any Credit Facility Obligations or Financial Products Agreements relating to any such Subordinate Lien Bonds.

"Subordinate Lien Sales Tax Revenue Bond" means the revenue bonds under the FasTracks Indenture.

*"Subsidiary"* or *"Subsidiaries"* means any corporation, limited liability company or other entity of which more than 50% of the outstanding stock or comparable equity interests entitled to vote in the election of the board of directors or similar governing body of such entity is directly or indirectly owned by the Company, by one or more Subsidiaries or by the Company and one or more Subsidiaries.

*"Supplemental Act"* means the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended.

"Supplemental Indenture" means any indenture supplementing or amending the Indenture that is adopted pursuant to the Indenture.

"TABOR" means the Colorado Taxpayer's Bill of Rights.

*"TABOR Payment Instructions"* mean the written instructions from the District to the Senior RTD Debt Trustee setting forth the priority and mechanics for payments of the TABOR Portion from the RTD Sales Tax Revenues.

*"TABOR Portion"* means, for each calendar year, the amount in Base Rate Dollars identified as "TABOR Portion TPn" in Table 4 of Part H (TABOR Secured Payments) in Attachment 11 (Service Payments) to the Concession Agreement.

"Tax-exempt Bonds" or "Tax-exempt series of Bonds" means any Bonds the interest on which is excluded from gross income for federal income tax purposes.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Technical Advisor" means Infrata, as the Lenders' technical advisor under the Transaction Documents and any replacement thereof.

"Technical Advisor Report" has the meaning given to it in "TECHNICAL ADVISOR REPORT" herein.

"Technical Panel" means the Technical Panel to which Disputes of a technical nature are referred in accordance with the Concession Agreement.

*"Termination Compensation"* means any of any of the following to be paid pursuant to the Concession Agreement: RTD Default Amount, Concessionaire Default Amount or FM Termination Amount.

*"Termination Date"* means (a) with respect to the Financing Documents, the date when all Bond Obligations to be paid or performed by the Company have been indefeasibly paid and performed in full; or (b) with respect to the Concession Agreement, the date on which the Concession Agreement is terminated pursuant to its terms.

"Third Party Agreements" means the Inter-Governmental Agreements, the Utility Relocation Agreements and the Railroad Agreements.

*"Total Debt Service Coverage Ratio"* or *"Total DSCR"* means for any 12-month period ending on a Calculation Date or on a 12-month forward-looking basis from such Calculation Date, if applicable, the ratio of A divided by B where:

A = the Borrower's Free Cash Flow for such period; and

B = the payment of all scheduled principal and interest on the Bonds during such period.

*"Traction Power"* means power supplied by the traction substations to the Traction Electrification System for the Commuter Rail Network expressed in megawatt-hours.

"Transaction Documents" means the Material Project Contracts and the Financing Documents.

"Transfer Date" means the third Business Day prior to the 15th calendar day of each month.

*"Treasury Regulation"* means the temporary, proposed or final federal income tax regulations promulgated by the U.S. Department of the Treasury, together with the other published written guidance thereof as applicable to the Bonds under the Code.

*"Treasury Rate"* means, with respect to any redemption date for a particular Bond, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days, but not more than 45 calendar days, prior to the redemption date (excluding inflation indexed securities) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Bond to be redeemed.

*"Trust Estate"* means the property and rights granted to the Trustee pursuant to the Indenture and described in "SECURITY FOR THE BONDS—Indenture—Trust Estate" herein.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., as Trustee, pursuant to the Indenture.

*"Trustee Enforcement Notice and Direction"* means the notice delivered by the Trustee to the Account Bank setting forth actions to be taken upon an event of default under the Financing Documents and as described in "ACCOUNTS AND FLOW OF FUNDS—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" herein.

*"UCC"* means the Uniform Commercial Code as in effect from time to time in the State of New York (or the Uniform Commercial Code of any other jurisdiction to the extent applicable).

*"Trustee's Instructions"* means the written instructions provided by the District to the RTD Trustee (with a copy to the Company) in the form attached to the Concession Agreement.

"Underwriters" means Barclays Capital, Inc., BofA Securities, Inc. and Wells Fargo Bank, National Association.

"Unidentified Archaeological Remains" means any archaeological remains that existed on a Site prior to the Final Proposal Due Date, excluding any such archeological remains that were known to the Company or the Design Build Contractor on the Final Proposal Due Date, as applicable, or that could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the Records of Decision and the NWES Environmental Evaluation and of the investigations and assumptions set forth therein.

"Unidentified Endangered Species" means any endangered species that is found on a Site, the continual or habitual presence of which was not identified or described in the Records of Decision or NWES Environmental Evaluation, excluding in each case any such endangered species that was known by the Company or the Design Build Contractor, as applicable, to exist habitually and continuously on such Site on May 14, 2010 or that could reasonably be expected to be found temporarily, continually or habitually on such Site based on the date reported in the Records of Decision or the NWES Environmental Evaluation.

"Unidentified Environmental Condition" means any Environmental Condition that existed on a Site prior to the date on which the District delivered Vacant Possession of such Site to the Company and that (a) was not identified or was incorrectly identified or described in certain environmental reports listed in the Concession Agreement or (b) manifests itself in a new location not identified or anticipated in such environmental reports, and in each case of (a) and (b), excluding any such Environmental Condition that could reasonably have been identified or discovered (or anticipated in the case of such condition that manifested itself in a location not identified or anticipated in such environmental reports) by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of such environmental reports and the investigations and assumptions on the basis of which such environmental reports were prepared.

"Unidentified Geological Obstruction" means any geological obstruction which disrupts the progress of the Work that existed prior to the Final Proposal Due Date and that, with respect to subsurface or latent conditions at the boring holes that were identified in certain geotechnical reports listed in the Concession Agreement, differs in a material respect from the conditions for such holes described in such geotechnical reports, excluding any such geological obstruction that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of such geotechnical reports and the investigations and assumptions on the basis of which the geotechnical reports were prepared.

"Unidentified Utility" means any Utility present on any Site that was not identified or was incorrectly shown, identified or described in the utility data set forth in the Concession Agreement, in each case excluding any Utility that:

- (a) is a Utility required to be relocated by the District in accordance with the Concession Agreement;
- (b) was installed on a Site after the Company took Vacant Possession of such Site;

(c) is a "service line," which for the purposes of this definition shall mean any Utility line, the function of which is to connect the common source of supply or service to an individual customer's service; or

(d) could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the utility data set forth in the Concession Agreement and the investigations and assumptions on the basis of which such utility data was prepared.

"Uninsurable Risk" means a risk in respect of which either:

(a) insurance is not available to persons engaged in the same or substantially the same business as the Company in the insurance market of the United States of America from time to time; or

(b) the premium payable for insuring that risk is at such a level that the risk is not generally being insured against by persons engaged in the same or substantially the same business as the Company in the insurance market in the United States of America from time to time.

*"Utility"* means any public or private utility and facility, including any facility relating to electrical energy, telephone and telecommunications, radio, television and public transit installations and the conveyance, distribution and supply of water, sewage, heat, gas, chemicals, steam, petroleum products and all piped installations, but excluding storm water facilities, traffic signals, and any street and station lighting and fire prevention measures to be installed in connection with the Project in accordance with the requirements of the Scope Document.

"Utility Drawings" means the utility design sheets attached to the Concession Agreement.

"Utility Owner" means the owner of any of the Utilities located in or under or crossing any Site.

"Utility Relocation Agreements" means any agreement entered into between the District and a Utility Owner in relation to the Eagle P3 Project.

"Vacant Possession" means, in relation to any part of any Site, access to and possession thereof or making available to the Design Build Contractor the right to use therein in accordance with the Concession Agreement in its existing state and condition subject to:

(a) access rights of the District and the Project Third Parties as set out in the Third Party Agreements, including with respect to Utility Work in connection with any Utility required to be relocated by the District in accordance with the Concession Agreement;

(b) access rights of the DUS Infrastructure Contractor pursuant to the DUS Infrastructure Agreement;

(c) the rights of Relevant Authorities, Utility Owners or third parties to have access to such Site existing as of the Final Proposal Due Date;

(d) the statutory rights or public franchise rights of Relevant Authorities and Utility Owners to have access to such Site existing as of the Final Proposal Due Date;

(e) the rights, including rights of access, granted to the District and its employees, agents, consultants and contractors and to other Persons under the Concession Agreement and the other Project Agreements;

(f) restrictions of use set forth in easement deeds and/or right of entry permits applicable to the Sites as such restrictions are specified in the Concession Agreement; and

(g) restrictions set forth in any title commitments related to the Sites attached to the Concession Agreement.

"Voluntary Clean-Up Application and Materials Management Plan" means each of:

(a) the Voluntary Clean-Up Application and Materials Management Plan for the East Corridor as approved by the Colorado Department of Public Health and Environment; and

(b) the Voluntary Clean-Up Application and Materials Management Plan for the Gold Line as approved by the Colorado Department of Public Health and Environment.

*"Warranty Periods"* means:

- (a) with respect to the Gold Line Project, a period ending on September 30, 2020;
- (b) with respect to the East Corridor Project, a period that ended on March 6, 2020;
- (c) with respect to the Northwest Rail Electrified Segment Project, a period that ended on April 20,

2019;

(d) with respect to the Commuter Rail Maintenance Facility, a period that ended on July 12, 2016;

with respect to the Rolling Stock, a period that ended for the last delivered Car on May 10, 2019;

and

(f) in the case of all design, construction and installation activities necessary for the full functionality of the DUS Rail Segment not provided as part of the DUS Infrastructure or the Fare System Equipment, a period that ended eighteen (18) months following the date on which the Company accepts the Design Build Contractor's Work with respect thereto, which occurred no later than December 2017;

# *provided*, *however*, that:

(e)

(i) the Warranty Period under clause (a), if any repair or replacement occurs prior to September 30, 2020, shall be extended for an additional twelve (12) months (but not to exceed twelve (12) months) from the date of repair or replacement solely with respect to any portion of the Work that is repaired or replaced during the final year of the initial Warranty Period, and as of the date of this Official Statement, there is one outstanding warranty claim for a construction paving repair made on August 5, 2020. The warranty period for such repair will terminate on August 5, 2021; and

(ii) any warranties from third-party suppliers, manufacturers or Subcontractors (including the Rolling Stock Supplier) longer than the Warranty Periods (including the Rolling Stock Warranty Period) shall be passed through to the Company.

"Work Order" has, in respect of any Utility, the meaning given to it in the relevant Utility Relocation Agreement.

# "Work Products" means:

(a) with respect to the Concession Agreement, all Concessionaire Design Submittals, all Record Documents, the plans and programs prepared by the Company during the Design Build Period, the O&M Submittals and all other drawings, designs, specifications, manuals, reports, studies, surveys, models, software, documents, materials, deliverables, data, inventions, whether or not patentable, and products, including with respect to the Final Project Design, prepared, developed, acquired or used by the Company, any Project Contractor or any of their respective Subcontractors or suppliers in connection with the Eagle P3 Project or which were otherwise necessary for the purposes of carrying out the Work or are necessary for the purposes of operating the Concessionaire-operated Components in accordance with the terms of the Concession Agreement;

(b) with respect to the Design Build Contract, Contractor Design Submittals, all Record Documents, the plans and programs prepared by the Design Build Contractor during the Design Build Period and all other drawings, designs, specifications, manuals, reports, studies, surveys, models, software, documents, materials, deliverables, data, inventions, whether or not patentable, and products, including with respect to the Final Project Design, prepared, developed, acquired or used by the Design Build Contractor or any of the Subcontractors or suppliers in connection with the Project or which were otherwise necessary for the purposes of carrying out the Work in accordance with the requirements of the Contract Documents; or

(c) with respect to the O&M Contract, the O&M Submittals and all other drawings, designs, specifications, manuals, reports, studies, surveys, models, software, documents, materials, deliverables, data, inventions, whether or not patentable, and products prepared, developed, acquired, used or intended to be used by

the O&M Contractor or any of the Subcontractors or suppliers in connection with the Project or which are otherwise necessary for the purposes of operating the Concessionaire-operated Components in accordance with the requirements of the O&M Contract.

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# APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT

The following is a summary of selected provisions of the Concession Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference in this Official Statement to any agreement shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Certain capitalized terms used herein are defined as set forth in the "Defined Terms" section located at the bottom of this Appendix C.

# **Rights and Obligations of the Company**

#### Concession; Lease

The Company has agreed, as and when required by the Concession Agreement, to (a) design and construct the Commuter Rail Projects and the Commuter Rail Maintenance Facility; (b) design, procure and install the DUS Systems; (c) design and procure the Rolling Stock; (d) provide the Commuter Rail Services and operate and maintain the Commuter Rail Network and the Rolling Stock; and (e) commencing on a specified date, dispatch the Heavy Rail Movements.

RTD has agreed to lease to the Company, for the purpose of providing the Company the access necessary to construct, operate and maintain the Commuter Rail Network: (a) all Sites (commencing on the date on which such Sites are made available to the Company under the Concession Agreement), (b) to all other parts of the Commuter Rail Network (excluding the DUS Rail Segment), commencing on the date on which title to such part of the Commuter Rail Network passes to RTD, and (c) the Rolling Stock, commencing on the date on which title to such Rolling Stock passes to RTD, in each case, upon the terms, covenants and conditions of, the Concession Agreement and the other Project Agreements.

RTD has also agreed to grant to the Company a license to use and occupy all parts of the DUS Rail Segment. Site and the DUS Rail Segment, commencing on the date RTD provides access to such site and segment and to use the DUS Systems, commencing on the date on which title to the relevant part of the DUS Systems passes to RTD, for the purpose of operating and maintaining DUS Rail Segment, upon the terms, covenants and conditions of the Concession Agreement and the other Project Agreements.

RTD has agreed that the Company shall peaceably and quietly have, hold and enjoy all parts of the Commuter Rail Network and the Rolling Stock, subject to (a) RTD's rights otherwise to enforce against the Company its obligations under the Concession Agreement; (b) access rights of RTD and certain third parties as set out in the agreements between RTD and such third parties attached to the Concession Agreement; (c) access rights of the DUS Infrastructure Contractor pursuant to the DUS Infrastructure Agreement; (d) the access rights of Relevant Authorities, Utility Owners or third parties; (e) the statutory, recorded property or public franchise rights of Relevant Authorities and Utility Owners to have access to any Site; (f) the rights, including rights of access, granted to RTD and its employees, agents, consultants and contractors and to other Persons under the Concession Agreement and the other Project Agreements; (g) rights or claims of parties in possession not shown by the public records; (h) specified disclosed restrictions of use set forth in easement deeds and/or right of entry permits; and (i) restrictions set forth in any title commitments related to the Sites.

## Term of the Concession and Lease Period

The Project is divided into phases, each of which requires certain conditions precedent to occur prior to effectiveness and entails defined parameters of the Work to be undertaken by the Company: (i) Early Work (Early Work Effective Date); Phase 1 (Phase 1 Effective Date); and Phase 2 (Phase 2 Effective Date). The following provisions of the Concession Agreement became effective upon execution: Sections 1 (*Definitions, Interpretations and Appropriations*), 5 (*Effectiveness, Early Work and Phasing*), 6 (*RTD Verification Rights*), 7 (*Representations and* 

Warranties), 10 (Financing), 16 (Reference Data), 35 (Indemnity), 39 (Force Majeure) (but only for the purposes of Section 5.7 (Achievement of or Failure to Achieve the Phase 1 Effective Date)), 48 (Assignment), 49 (Partnering), 50 (Dispute Resolution Procedure), 52 (No Partnership), 55 (Confidentiality), 56 (No Deemed Waivers; Remedies Cumulative), 57 (Amendments), 58 (Notices, Etc.; Language), 59 (Captions), 60 (Governing Law), 61 (Consent to Service of Process), 62 (Waiver of Consequential Damages), 63 (Execution in Counterparts), 64 (Binding Effect), 65 (Severability) and 66 (Entire Agreement) and the attachments referred to in such sections. Upon the Early Work Effective Date, the following provisions come into effect solely with respect to and as necessary to implement the Early Work in accordance with the Concession Agreement: Sections 8 (RTD's Representative), 9 (Key Personnel), 11 (Land), 12 (Site Conditions and Site Investigation), 13 (Environmental Requirements), 14 (Safety and Security), 15 (Utilities), 17 (Permits), 18 (Submission), 19 (RTD Review), 20 (Project Third Party Review), 22 (Construction and Procurement) (other than Section 22.8 (Independent Engineer)), 23 (Concessionaire's Obligations and RTD's Rights), 25 (Organization of the Worksite), 26 (Construction Payments), 30.4 (Appropriations), 32 (Audit and Records), 34 (Insurance), 36 (Changes), 37 (Change in Law), 38 (Relief Events), 39 (Force Majeure), 41 (Termination of the Agreement) and 53 (Illegal Aliens) and the attachments referred to in such sections. All of the provisions of the Concession Agreement (with the exception of provisions relating to Phase 2 will become effective on the Phase 1 Effective Date. The Lease Period will also commence on the Phase 1 Effective Date and will end on the date of expiration or early termination of the Concession Agreement, provided that, with respect only to the Rolling Stock, if the Concession Agreement is terminated early, the Lease Period will not end until RTD has fully paid the Applicable Termination Amount or December 31, 2044, whichever occurs earlier.

#### Limited Phase 1 Notice to Proceed and Full Phase 1 Notice to Proceed

RTD has agreed to deliver the Limited Phase 1 Notice to Proceed upon satisfaction of the conditions precedent to the Phase 1 Effective Date. If RTD fails to deliver such Limited Phase 1 Notice to Proceed within 15 days of the Phase 1 Effective Date, such notice will be deemed to be delivered. Until the delivery of the Full Phase 1 Notice to Proceed, the Company shall carry out only that Phase 1 Work that (a) does not require the Company to enter onto or use the UP Sites and (b) does not, when taken together with all other Phase 1 Work carried out by the Company, require expenditure by the Company of an amount in excess of the amount specified in the Concession Agreement. When the Company's expenditures reach such specified amount, the Company shall so notify RTD, and RTD shall, in its sole discretion, (a) increase such specified maximum expenditure amount by an amount that would allow continuation of Phase 1 Work for not less than the succeeding one-month period, (b) order a suspension of the Work (in which case the Company may claim a Relief Event (subject to the provisions of the Concession Agreement applicable to the Relief Events generally), or (c) terminate the Concession Agreement. Any failure of RTD to respond within 15 days following delivery of the Company's notice shall be deemed to be an order to suspend the Work. Upon delivery by RTD of the Full Phase 1 Notice to Proceed, the Company shall carry out all Phase 1 Work in accordance with the Concession Agreement. If RTD has not delivered the Full Phase 1 Notice to Proceed by December 31, 2011, either party may terminate the Concession Agreement by thirty (30) days' prior written notice.

# Phase 2 Obligations; Consequences of Failure to Achieve Phase 2 Effective Date

The provisions of the Concession Agreement relating to Phase 2 shall come into effect on the Phase 2 Effective Date. Until then, Phase 2 shall not constitute part of the Work or the Commuter Rail Services, and RTD shall have no obligation for payment, including any Construction Payments and Service Payments, for any work performed by the Company on or in relation to Phase 2. The Phase 2 Effective Date will occur when RTD delivers to the company the Phase 2 Notice to Proceed. The deadline for the delivery of the Phase 2 Notice to Proceed is December 31, 2011, but might be extended by the parties' agreement. If the Phase 2 Notice to Proceed is not delivered on or prior to such deadline, RTD shall notify the Company of the location(s) for delivery of the Phase 2 Rolling Stock, and the Company shall (a) deliver such Phase 2 Rolling Stock to RTD at such specified locations and (b) assign all warranties under the Rolling Stock Supply Contract in respect of the Phase 2 Rolling Stock to RTD upon delivery with RTD responsible for any additional delivery costs associated with delivery other than within RTD, and RTD shall either increase the Maximum Annual Phase 1 Construction Payment Amounts by an amount specified in the Concession Agreement, with such increase to be effective on a date no later than 180 days after deadline for the Phase 2 Effective Date, or request that the Company use its Reasonable Efforts to secure debt financing from Lenders and equity support from the Shareholders equal to the Phase 1 Excess Financing Amount, on terms consistent in all material respects with the Financial Model as at Financial Close and the provisions of the Concession Agreement. If the Company succeeds in securing such financing, it shall notify RTD of the terms of such financing and the Additional TABOR Portion Capacity, if any, required to be made available for the Company's exclusive use in accordance with the terms of the Concession Agreement as necessary to achieve such financing. Immediately upon closing of the financing for the Phase 1 Excess Financing Amount on the terms communicated to RTD, among other things: the Base Annual Service Payments will be adjusted (upward or downward) to reflect the financial impact of the actual change, if any, in the cost of raising the Phase 1 Excess Financing Amount on the ability to achieve the Base Case Equity IRR, the same debt service coverage ratio, the same debt to equity ratio and other reasonable and customary financial ratios as set forth in the Financial Model. If (a) RTD does not increase the Maximum Annual Phase 1 Excess Financing Amount within ninety (90) days after the delivery of RTD's request, the Company may claim a Relief Event.

### **Cooperation on Other District Projects**

The Company is obligated to provide to RTD, upon request, certain information and project records in connection with rail line or other transportation projects developed by RTD, or on behalf of RTD by persons other than the Company, and to use all Reasonable Efforts to cooperate and liaise with RTD and all RTD designated contractors engaged in such other District projects to the extent reasonably necessary to facilitate such other District projects, but such obligation to cooperate and liaise shall not require the Company to take, or refrain from taking, any action that would reasonably be anticipated to adversely affect the Work or the carrying out of the Company's other obligations under the Concession Agreement.

## **Provisions Relating to Financing of Company's Obligations**

### Security

For the purpose of financing the design, construction, commissioning and completion of the Eagle Project and the operation and maintenance of the Concessionaire-operated Components, the Company may, with the prior written consent of RTD, assign and/or create security over its rights and interests in and under the Concession Agreement (including a leasehold mortgage over the lease granted by RTD to the Company), any other Project Agreement, its property, its revenues, its bank accounts, the Intellectual Property Rights (to the extent it is lawfully able to do so under any Applicable Requirement) or any other rights and assets for the benefit of the Lenders.

#### Amendments to Financial Model and Designated Credit Agreements

RTD has the right to approve any and all amendments, modifications or variations of any Designated Credit Agreement that is not consistent in all material respects with the Financial Model during an initial 14-day review process. An amendment or other variation of a Designated Credit Agreement, or a waiver of any provisions of a Designated Credit Agreement and certain other actions, may also constitute a "Refinancing" and, with the exception of certain transactions, will entitle RTD to share in any gain resulting from such Refinancing. RTD may elect to receive its share of the refinancing gain in the form of a lump sum payment, a reduction in the Service Payments over the remaining term of the Concession Agreement or a combination of the two. Any adjustment to the Financial Model (other than adjustments which are necessary under certain provisions of the Concession Agreement, such as provisions governing Refinancing or adjustments to Service Payments) is also subject to RTD's prior consent during an initial 30-day review process.

# **Cooperation on Future Financing**

If so requested by the Company, RTD shall use Reasonable Efforts to assist the Company in obtaining federal credit assistance in the form of allocations by the United States Department of Transportation for private activity bonds and/or similar assistance under any other Federal program, but not including loans under the Transportation Infrastructure Finance and Innovation Act or the Railroad Rehabilitation and Infrastructure Financing Program. RTD shall, promptly upon the request of the Company or any Lender, execute, acknowledge and deliver to the Company, or any of the Persons specified by the Company, standard consents and estoppel certificates with respect to the Concession Agreement.

### **Availability of Construction Sites**

RTD will, at its own cost, obtain and provide to the Company vacant possession of each Site (subject to certain restrictions of use and/or right of entry permits) within the time periods specified in the Concession Agreement. If, during the Design Build Period, the Company requires any additional land (other than temporary construction easements necessary only during the performance of the Work for which the Company shall bear the cost and risk), the Company shall so notify RTD and RTD will use its best efforts in accordance with applicable Law to obtain and provide to the Company such additional land, at the Company's cost.

## **Environmental and Regulatory Matters**

The Concession Agreement requires the Company to comply with all environmental obligations associated with the Project, including, but not limited to, permitting requirements, environmental impact mitigation requirements and responsibility for site contamination. The Company must also abide by the mitigation measures established in the NEPA review and with the hazardous material procedures as approved by the Colorado Department of Public Health and Environment.

#### Site Contamination

The Concession Agreement allocates responsibility between the Company and RTD for site contamination found on the Project rights of way. RTD is responsible for costs associated with the cleanup of certain pre-existing site contamination on or near the Project Site. When the Project is being constructed through areas with pre-existing site contamination, RTD and the Company will coordinate on an action plan. RTD will either reimburse the Company for the Company's actual costs of clean-up, up to the cost estimate proposed by the Company, or RTD will perform the cleanup itself. There is no maximum cost liability established in the Concession Agreement, so RTD is liable for such costs regardless of their overall amount.

Some contamination conditions are Relief Events for which schedule and cost relief are available. The Concession Agreement provides the Company with schedule relief if the contamination was not identified at the time the Company received control of the Project rights of way. If the contamination was known to exist or could have been foreseen based on environmental reports prepared by RTD, the Company bears the risk of assessment, planning and project management of such cleanup activities so as not to delay the construction of the Project. Environmental information was provided for most of the Project Sites and indicates that contamination is likely present within areas that will be part of the Project Site.

The Concession Agreement provides that RTD and the Company will share equally in the savings if the total costs expended for environmental remediation in connection with the Project are lower than \$18,500,000. RTD will pay the Company one-half of such savings within thirty (30) days after the construction of the Project is completed.

#### Archaeological Remains, Geological Obstructions and Endangered Species

In addition to site contamination, the Concession Agreement addresses other site conditions of concern, including the presence of archaeological remains, geological obstructions and endangered species. Archaeological remains are to be removed without delay at RTD's cost. The Company is responsible for the costs and schedule management relating to the presence of geological obstructions and endangered species if the presence was known prior to the date of bid proposal or could reasonably have been discovered by review of the available reports and information. All costs and delays associated with any such conditions that are not known and could not have been identified by the date of bid proposal give rise to schedule and cost relief.

#### Permitting

The Company and RTD share the responsibility for obtaining permits for construction of the Project. The Company must acquire all permits required for construction of the project, except for permits specifically allocated to RTD. The permits for which RTD is responsible have already been obtained. The rest of the permits must be obtained by the Company. Generally, the Company receives no schedule or cost relief if it fails to obtain any permit in a timely

fashion. RTD will cooperate with the Company in applying for the Permits and will, at the reasonable request of the Company and at the Company's cost, and where necessary, obtain, renew, replace, extend the validity of, or arrange necessary amendments to the Permits.

### Mitigation of Environmental Impacts on the Project

The Concession Agreement allocates to the Company the responsibility of managing the environmental impacts of the Project. The Company must address temporary construction impacts by developing and implementing a construction management plan that considers air quality protection, noise control, water quality protection and safety. The Company must also take steps to limit impacts on protected species, such as the black-tailed prairie dog or burrowing owl, and to develop an integrated noxious weed management plan to limit the spread of these plants. Other mitigation required to be performed by the Company include the implementation of hazardous material management measures, including materials, health and safety plan, and an asbestos and lead-based paint survey.

### Utilities

The construction Work under the Concession Agreement will require relocation of certain Utilities. The Concession Agreement specifies which of the Utilities are to be relocated by the Company, by RTD or by a Utility Owner. In the case of a Utility required to be relocated by RTD, if RTD does not relocate such Utility (a) in accordance with the Utility Drawings by the date on which the Site (on which such Utility is located) is made available to the Company, or (b) by the completion date as specified in a utility matrix attached to the Concession Agreement, the Company will be entitled to a Relief Event. In the case of a utility required to be relocated by a Utility Owner, the Company will be responsible for coordinating and scheduling the relocation of such Utilities in accordance with certain requirements and a work order, which shall be negotiated among the Company, RTD and the Utility Owner. Failure by a Utility Owner to timely relocate a Utility in accordance with an applicable work order will entitle the Borrower to a Relief Event. The discovery of an Unidentified Utility will also entitle the Company to a Relief Event.

# **Construction and Procurement**

#### The Work

The Company will carry out and complete the Work in accordance with the Concession Agreement, the Project Requirements and Good Industry Practice standards, and the applicable Third Party Agreements of RTD, including agreements with the heavy rail operators. The Company shall use Reasonable Efforts to ensure that the Revenue Service Commencement Date for each Commuter Rail Project occurs on or before the applicable Revenue Service Target Date, Final Completion for each Commuter Rail Project occurs on or before the date falling six months after the Revenue Service Commencement Date for such Commuter Rail Project, that the Final Completion Certificate for each Commuter Rail Project, when commissioned, operates so as to comply with the O&M Standards, and that the Construction Security is appropriately maintained. During the Design Build Period, the Company shall perform certain operations and maintenance activities and comply with, and shall ensure that the Project Contractors and each of their Subcontractors complies with, certain provisions enumerated in the Concession Agreement. The Company shall provide monthly progress reports to RTD and any other related information as requested by RTD. The Work shall not include the procurement and installation of any fare system equipment, which will remain RTD's responsibility.

## Scope of Work

The Company will be obligated to carry out the Phase 1 Work and, following the Phase 2 Effective Date, the Phase 2 Work. The scope of the Phase 1 Work is subject to change based on a "third party option," pursuant to which RTD may select one among several specific configurations of an element of the Phase 1 Work. RTD's right to exercise the third-party option expires on November 10, 2010.

### **Ownership of Concessionaire-operated Components**

Upon the incorporation into the Commuter Rail Network of each part of the Commuter Rail Network (excluding the Sites and the DUS Infrastructure) and completion of all Work related to such part, ownership of and title to such part of the Commuter Rail Network shall immediately and automatically vest in RTD free from all encumbrances. Ownership of and title to each part of the Rolling Stock shall vest in RTD free from all encumbrances upon delivery of any element of the Rolling Stock to a Site or, in certain circumstances, to the location or locations designated by RTD in a prior Phase 2 Rolling Stock Termination Notice.

# Suspension of Work

RTD has the right to order the suspension of Work: (a) in the event of an emergency that creates an immediate need and serious threat to public health, safety, security or the Environment; (b) where it has reasonable grounds for concluding that damage to any part of RTD's existing system, any Site, or any assets owned by any party on any part of any Site or personal injury to the employees or contractors of RTD or third parties is likely to result from the continuation of the Work; (c) if RTD is notified by a counterparty to a District contract that the Work does not comply with the requirements of such District contract and RTD has reasonable grounds for concluding that the basis for such notice's assertions is well founded; or (d) if RTD is notified by any governmental authority that the Work is in breach of any applicable Law or permit and RTD has reasonable grounds for concluding that the basis for such notice's assertions is well founded. RTD also has a right to order the suspension of Work if the Company has given a notice that the Company has exhausted the funds the Company is permitted to spend on Phase 1 Work prior to the delivery of the Full Phase 1 Notice to Proceed.

### **District's Access**

RTD and its consultants, agents and contractors shall have access to the Sites, the Work and the Commuter Rail Network and all other locations on or off the Sites where materials and interim and permanent items are being produced, manufactured, fabricated or stored, for the purpose of monitoring the quality and progress of the Work, attending the execution of any phases and tests of the Work and otherwise for the purpose of exercising certain rights of RTD, provided that RTD shall give the Company at least seven (7) days' notice of any such access if the location to be visited is outside the State of Colorado.

#### Interface with Heavy Rail Operators

The Company shall operate and maintain the Concessionaire-operated Components in accordance with the requirements of the Railroad Agreements and without impairing, disrupting, interfering with or otherwise having an adverse impact on the activities or operations of any Heavy Rail Operator. To the extent that the Company causes any impairment or disruption to, or interference with or impact on the activities or operations of any Heavy Rail Operator (except any such interruption that has been agreed by the Company in advance with the relevant Heavy Rail Operator or that does not constitute a breach of any Railroad Agreement), the Company shall, to the fullest extent permitted by Law, fully and effectively indemnify and hold harmless RTD for all losses and/or claims arising out of such impairment, disruption, interference or impact, but only to the extent that such losses and/or claims do not arise as a result of the negligent acts, omissions or willful misconduct of RTD or any District agent, servant, consultant or employee.

## **Construction Payments**

During the Design Build Period, RTD shall make certain monthly Construction Payments to the Company, subject to certain annual and aggregate caps with respect to Early Work Phase 1 Work, and Phase 1 and Phase 2 Work combined. The amount of each Construction Payment shall equal the total Earned Value of Work not previously paid as determined by reference to the Original Baseline Schedule (or, as the case may be, the Revised Baseline Schedule) and the Schedule of Values based on the Company's progress on the Work. The Construction Payments for Phase 2 also include Phase 2 Financing Cost Payment, which shall not exceed the lesser of Financing Costs accrued under the Designated Credit Agreements and one-twelfth of the Maximum Annual Phase 2 Financing Cost Amount. RTD shall, no later than thirty (30) days after the Company's delivery of an application for a Construction Payment, together with

all supporting materials, pay to the Company any undisputed amount claimed by the Company in its application, together with 50% of any disputed amount. The annual caps on the Construction Payment are subject to adjustment by predetermined amounts upon exercise of the third-party option by RTD or failure to achieve the Phase 2 Effective Date.

# Completion

# **Revenue Service Commencement Dates**

The Revenue Service Commencement Date for each Commuter Rail Project shall be the date on which the following Revenue Service Commencement Requirements have been satisfied, as certified by the Independent Engineer:

(a) except with respect to the identified punch list items, such Commuter Rail Project has been completed in accordance with the provisions of the Concession Agreement, the Project Requirements and Good Industry Practice;

(b) certain testing and inspection activities have been successfully carried out;

(c) during the system performance test, the Availability Ratio (calculated on a daily basis for the duration of the relevant period) for the applicable Commuter Rail Service was at least 95% for a consecutive 21-day period and at least 97% for a consecutive seven-day period within such 21-day period;

(d) all permits required for the operation of such Commuter Rail Project and such Commuter Rail Service have been obtained in final form and are not subject to appeal;

(e) all required Company design submittals and contract data relating to the operation and maintenance of such Commuter Rail Project have been submitted to, and, if required, approved by, as the case may be, RTD, the Project Third Parties and the Relevant Authorities (as applicable);

(f) the required training program has been completed; and

(g) certain other conditions, including but not limited to implementation of the safety and security certification plan have been fulfilled by the Company.

# Final Completion Dates

The Final Completion Date for each Commuter Rail Project shall be the date on which the following Final Completion Requirements for such Commuter Rail Project have been satisfied, as certified by the Independent Engineer:

(a) the relevant Revenue Service Commencement Certificate has been issued;

(b) the Company has demonstrated that the Availability Ratio on such Commuter Rail Service is an average of at least 94% for a period of any six consecutive calendar months commencing after the Revenue Service Commencement Date for such Commuter Rail Service and ending prior to the Final Completion Deadline Date;

(c) the Availability Ratio for such Commuter Rail Service has not fallen below 80% in more than one calendar month (or, if a single, continuous event lasting no more than 30 days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80%, two calendar months) following (and including) the calendar month in which the Revenue Service Commencement Date occurred and the last calendar month of the six calendar month period referred to above;

(d) all contract data relating to the operation and maintenance of such Commuter Rail Project and Commuter Rail Service has been submitted to or approved by, as the case may be, RTD and the Project Third Parties (as applicable);

(e) all of the punch list items set out in the schedule to the Revenue Service Commencement Certificate for such Commuter Rail Project shall have been carried out;

(f) all demobilization from the relevant Sites is complete; and

(g) certain other conditions, including but not limited to, completion of all system performance demonstration reports have been fulfilled by the Company.

# Final Completion Deadline

The Final Completion Deadline Date is the date falling 24 months after the last Revenue Service Commencement Date (as it may be amended by the parties' agreement).

# **Operation and Maintenance**

# **Operating Period**

The Company shall begin operation of each Commuter Rail Service on the Revenue Service Commencement Date for that Commuter Rail Service or on such later date as RTD may require; provided that the Service Payment shall not be reduced to reflect any impact to the Availability Ratio or the accrual of any Performance Deductions arising solely as a result of RTD's requirement for operation by the Company of a Commuter Rail Service to begin after the Revenue Service Commencement Date for such Commuter Rail Service. The Company shall also be responsible for the dispatch of all Heavy Rail Movements. The Company will operate the Commuter Rail Services and operate and maintain the Concessionaire-operated Components throughout the Operating Period in compliance with the following requirements (collectively referred to as the O&M Standards):

- (a) the provisions of the Concession Agreement;
- (b) certain third party agreements of RTD;
- (c) the O&M Specifications;
- (d) all Permits;
- (e) all applicable Law, environmental, health, safety and security requirements;
- (f) the requirements of specified Disadvantaged and Small Business Enterprises programs;
- (g) Good Industry Practice; and
- (h) certain other parameters.

The Company will take, and will ensure that the O&M Contractor and the O&M Subcontractors and their respective personnel take, all necessary action in accordance with Good Industry Practice, the Concession Agreement and applicable Law to ensure: (a) the uninterrupted and safe operation of the Commuter Rail Services in accordance with the O&M Standards and (b) that the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components does not impair, disrupt, interfere with or otherwise have an adverse impact on the operation of RTD's light rail or bus operations. The Company shall require the O&M Contractor and each O&M Subcontractor to agree to certain provisions in the O&M Contract or relevant Subcontract, as the case may be.

#### Maintenance and Repairs

The Company will at all times maintain, keep in good operating repair and condition and renew, replace and upgrade to the extent reasonably necessary, the Concessionaire-operated Components and any part thereof. The Company shall carry out all maintenance and repairs to the Concessionaire-operated Components at the Company's own cost and in accordance with the applicable standards and in a manner that causes the minimum amount of disruption to the operation of the Concessionaire-operated Components, to RTD and to the counterparties to RTD's Third Party Agreements. The Concessionaire-operated Components should, upon expiration, have the residual life specified in the Concession Agreement.

# **Emergencies and Disruptions; RTD Intervention**

The Company will, at all times, (a) respond as soon as possible to accidents, emergencies or other incidents; (b) provide prompt notice to RTD of any accidents, emergencies or other similar incidents; (c) minimize the adverse effects of any accidents, emergencies or other incidents; and (d) react promptly and efficiently in the event of any incident or emergency necessitating the evacuation of any part of the Commuter Rail Network. If (a) RTD considers that a breach by the Company of an obligation under the Concession Agreement creates an immediate and serious threat to public health, safety, security or the Environment; or (b) an event of an emergency has occurred that creates an immediate need and serious threat to public health, safety, security or the Environment and the Company has not taken steps to remedy or mitigate the effects of the emergency; or (c) RTD has reasonable grounds for concluding that damage to, or a threat to the safety or security on, RTD's commuter rail (excluding the Commuter Rail Network), light rail or bus operations is likely to result from the continuation of the Company's operation and maintenance of the Concessionaire-operated Components, RTD may immediately intervene in the operation and maintenance of the Concessionaire-operated Components and take such reasonable action as it considers necessary, including issuing directions to the O&M Contractor, in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, security or the Environment or otherwise to ensure the safety of the passengers. RTD may for this purpose enter into any part of the Concessionaire-operated Components or the Site for such period as is necessary and take over all or any part of the operation and maintenance of the Concessionaire-operated Components.

#### Electrical Energy

The Company shall ensure the connection of the Commuter Rail Network to the power network in accordance with the applicable requirements and shall ensure the supply of any electrical power required for the performance of the Work and the operations and maintenance of the Commuter Rail Network and the Rolling Stock. The Company shall pay for all electrical power used in the performance of the Work and for operations and maintenance of the Commuter Rail Network (except with respect to traction power, for which RTD will be largely responsible, subject to certain cost-sharing and efficiency incentive arrangements).

# **Physical Security**

During the Operating Period, the Company shall provide the necessary security and fare inspection services and make all necessary arrangements to ensure the protection of the Concessionaire-operated Components from damage and the protection of the safety and security of all passengers and staff on the Concessionaire-operated Components. Certain security-related responsibilities will be performed by armed security officers provided and supervised by RTD.

## **Collection and Determination of Fares**

RTD shall be responsible for, and shall have all the necessary rights to effect, the supply, installation, testing, operation and maintenance of the fare system equipment and shall primarily be responsibly for the collection of all fares, with a possible exception for the fare system equipment which might be required to be carried by the Company's personnel in its performance of the fare enforcement obligations in accordance with the O&M Specifications. RTD will determine in its sole discretion the level and structure of fares, ticketing and all other aspects of generating fare revenue. RTD shall have all rights, title and interest in all fare revenue collected with respect to the use of the Commuter Rail Network.

### Advertising and non-Passenger Derived Revenue

RTD shall have all rights relating to advertising on the Concessionaire-operated Components and the Company shall cooperate and grant all necessary access to RTD and any third party authorized by RTD in connection with RTD's exercise of its rights relating to advertising. RTD shall pay to the Company the reasonable costs and expenses which are incurred directly by the Company in installing and/or maintaining the said advertising (other than routine maintenance).

## **Service Payments**

#### Calculation of Service Payments

From the first Revenue Service Commencement Date, the Company shall become entitled to payment of the Service Payment on a calendar monthly basis calculated based on a fixed base monthly amount for each of the Commuter Rail Services, adjusted for the Availability Factor and Performance Deductions, among other adjustments. A portion of the Service Payments is indexed to a blended inflation rate tied to the CPI, labor and materials indices. The Availability Factor is based on the Availability Ratio which, in turn, is comprised of the Rolling Stock Availability, the On Time Availability and the Station Availability for the applicable month, which, for the purpose of determining the Service Payment amount, will be calculated on a system-wide basis. RTD shall make the Service Payments based on the Company's invoices.

#### **TABOR Portion of Service Payments**

RTD's obligation to make the Service Payment is divided into the TABOR Portion and the RTD Appropriation Obligation. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—TABOR Portion" and "PAYMENTS UNDER THE CONCESSION AGREEMENT—RTD Appropriation Obligations" for the description of the TABOR Portion of the Service Payments and the Additional TABOR Portion.

### **RTD** Appropriation Obligation Portion of Service Payments

The RTD Appropriation Obligations are subject to RTD's Board expressly making prior annual appropriations of moneys for the purposes of the Concession Agreement. No RTD Appropriation Obligation which requires funding in any Fiscal Year is legally enforceable against RTD without an appropriation by the Board for the relevant amount of funding in such Fiscal Year. RTD has agreed that the RTD Appropriation Obligations which require funding and are payable or expected to be payable during the following Fiscal Year shall be included in RTD's annual budget for consideration by the Board for appropriation, and that any and all such RTD Appropriation Obligations) within RTD's annual budget for consideration by the Board for appropriation, and RTD shall use best efforts to ensure the availability of funds to meet such RTD Appropriation Obligations.

#### The Company's Right and Obligation to Suspend Service

Subject to certain conditions, if RTD reasonably anticipates that the Board will not include any RTD Appropriation Obligations that are payable or expected to be payable during the following Fiscal Year in RTD's annual budget for such Fiscal Year, RTD shall notify the Company no later than 45 days prior to the start of such Fiscal Year of the amount of such shortfall. As soon as is reasonably practicable under the circumstances, and until the Company is notified by RTD that such shortfall of the RTD Appropriation Obligations has been included in RTD's annual budget for such Fiscal Year, the Company (a) shall suspend the Work or, in the case of a partial shortfall of the RTD Appropriation Obligations, may suspend the Work and/or (b) shall suspend or partially suspend operation of the Concessionaire-operated Components from the date of such notice to the extent and in the manner directed by RTD. If the Board fails to include any RTD Appropriation Obligations that are payable or expected to be payable pursuant to the Concession Agreement for the following Fiscal Year in its annual budget for such Fiscal Year, the Company shall suspend or may partially suspend, as applicable, performance by the Company of the Work and/or shall suspend or partially suspend, as applicable, operation Obligations have not been included in grant of the Fiscal Year for which adequate funds to meet such RTD Appropriation Obligations have not been included in the following fiscal Year in the company of the Work and/or shall suspend or partially suspend, as applicable, operation Obligations have not been included in the fiscal Year for which adequate funds to meet such RTD Appropriation Obligations have not been included in

such annual budget. Each suspension described in this paragraph shall be treated as an RTD Proposed Change. During any period of suspension or partial suspension, the Company may continue to submit Invoices to the RTD with respect to the TABOR Portion up to a maximum amount equal to the Service Payment that would have been payable in the absence of such suspension (minus certain avoidable costs which are not being incurred by the Company during such period of suspension) and, in the event of a partial suspension only, any other portion of the Service Payment that remains payable and for which the Board has included funds in RTD's annual budget for such Fiscal Year.

# **Rolling Stock Provisions**

# **Rolling Stock Option**

RTD has an option to request that the Company procure and deliver, at RTD's cost, no less than eight and no more than 24 additional cars. Such option is exercisable once, at any time prior to 24 months before the Rolling Stock Supplier's scheduled delivery date of the final Car (other than the Rolling Stock Option Cars) under the Original Baseline Schedule (or, as the case may be, the Revised Baseline Schedule), but in any event no later than the fifth anniversary of the Concession Agreement.

# **Rolling Stock Replacement**

Not later than the date which is 25 years after the first Revenue Service Commencement Date, the parties shall jointly prepare (each at its own cost) a detailed report setting out: (a) the condition and state of repair of each Car; (b) an estimate of the remaining useful life of each Car; (c) any measures that could reasonably be taken in order to extend the useful life of any Car, any amendments to the maintenance regime and/or to the Handover and Reinstatement Work Procedures necessary to achieve such an extension and the cost of implementation; and certain related matters. To the extent RTD has undertaken the process for procurement of any replacement Rolling Stock for use by RTD after the Expiry Date, the Company will be obligated to use all Reasonable Efforts as RTD may reasonably request to assist with such procurement, provided that (i) any such request will be treated as an RTD Proposed Change under the Concession Agreement and (ii) this obligation will not require the Company to take any action that would reasonably be anticipated to adversely affect the Concessionaire-operated Components, the provision of the Commuter Rail Services or the carrying out of the Company's other obligations under the Concession Agreement.

# **Intellectual Property Rights**

The Company shall provide the Work Products to RTD in accordance with the terms of the Concession Agreement. The Company has granted to RTD, for the benefit of RTD and the FTA, a fully paid-up, royalty-free, nonexclusive, irrevocable, perpetual license, with the right to sub-license, limited to the territory of the United States of America, to use, make, import, reproduce, publish, display, modify, create derivative works from or otherwise exploit certain elements of the Work Products (not including the Financial Model) in connection with the Project, any RTD Related Project and direct purposes of the US government. In addition, the Company is obligated to obtain, on behalf of RTD, at the Company's expense, certain rights and licenses for use by RTD and/or its contractors in connection with the Eagle Project of the elements of the Work Products that are owned by third parties. The Company shall provide all documentation and licenses, information, materials and assistance reasonably required by RTD to exercise such use rights, including (a) any additional licenses needed for new developments or additions, and (b) all information and source code necessary to fully access and create derivative works based on software. The Company shall indemnify RTD (and its directors, officers, agents, consultants or employees) to the maximum extent permitted by law from and against all Loss, whether direct or indirect, and Claims that RTD (or any of its directors, officers, agents, consultants or employees) may suffer or incur (a) arising out of a breach of the Company's warranties related to the Company's intellectual property rights or otherwise out of any Claim of an infringement of such intellectual property rights or (b) if RTD's rights and interests provided under the Concession Agreement with respect to certain of the Company's intellectual property rights are at any time determined by a court of law or other competent authority to be invalid, ineffective or impaired in any material respect.

### Insurance

The Concession Agreement specifies which party is responsible for the various policies of insurance required to be carried under the Concession Agreement, the Design Build Period and the Operating Period. During the Design Build Period, RTD, at its own expense, will procure, pursuant to an owner controlled insurance program (the "OCIP"), certain insurance coverages with respect to workers' compensation/employer's liability, commercial general liability and excess liability coverage, for the benefit of the Company, the Design Build Contractor, any Design Build Subcontractor, the O&M Contractor and any O&M Subcontractor, in each case, to the extent that these contractors are enrolled in the OCIP and performing eligible work in accordance with the requirements set forth in the OCIP Manual. In addition, during the Design Build Period (with certain exceptions, including with respect to Rolling Stock and railroad protective liability insurance), RTD, at its own expense, will procure certain other insurance coverages not subject to the OCIP enrollment requirements with respect to builder's risk insurance, contractor pollution liability insurance, railroad protective liability insurance and rolling stock insurance. Also during the Design Build Period, the Company will procure certain statutorily-mandated insurance coverages and certain other additional insurance coverages not procured by RTD. During the Operating Period, the Company will, at its own expense, procure certain insurance coverages in respect of the Concessionaire-operated Components that generally include the insurance coverages provided by RTD during the Design Build Period. In the event that any risk required to be insured by the Company is an Uninsurable Risk, RTD will assume the risk of the occurrence of the Uninsurable Risk on the same basis as such Uninsurable Risk would have been insured by the Company in accordance with the Concession Agreement. The Concession Agreement also provides a gradated mechanism for the sharing of insurance costs, in the event such costs exceed the costs assumed in the Company's Bid Insurance Cost by more than Consumer Price Index.

#### **Company Indemnity**

The Company will fully indemnify and hold harmless RTD and RTD's agents, servants, consultants and employees and, to the extent required by the Project Agreements, the Project Third Parties and their respective agents, servants, consultants and employees from and against all Losses and/or Claims (excluding any Losses of, or Claims for, lost revenue to RTD resulting from a failure to collect passenger fares) arising out of or in connection with any act or omission of the Company or its agents, servants, consultants or employees in connection with the Concession Agreement and the other Project Agreements or breach thereof or any willful misconduct of the Company or its agents, servants, consultants or employees. The Company will not be liable to indemnify RTD or the Project Third Parties or their agents, servants, consultants or employees for any Losses and/or Claims, to the extent that they have been fully and effectively indemnified by the proceeds of insurance carried under the Concession Agreement or otherwise in accordance with the terms of any Third Party Agreement or other agreement between the Company and, as the case may be, the relevant Project Third Party or any of its agents, servants, consultants or employees.

# Changes

# **Company Proposed Changes**

The Company shall have the right to suggest a change to the Final Project Design, the Design, Construction and Rolling Stock Requirements or the O&M Specifications. The Company-proposed changes are subject to consent by RTD at its discretion.

## **RTD** Proposed Changes

If RTD wishes to initiate at any time any change or alteration to:

(a) the Final Project Design, the Design, Construction and Rolling Stock Requirements or the O&M Specifications or, with respect to the Rolling Stock, the procedures relating to the Handover and Reinstatement Work Requirements;

(b) require the Company to operate and maintain any Other RTD Project, to the extent such project constitutes a rail line connected to the Commuter Rail Network, as an additional element of the Project;

(c) require the Company as part of a regularly scheduled or occurring service to dispatch Heavy Rail Movements on a portion of the Commuter Rail Network other than the DUS Rail Segment; or

(d) during the Design Build Period only, accelerate elements of the Work, including as determined by reference to the Original Baseline Schedule (or, as the case may be, the Revised Baseline Schedule),

RTD shall be entitled to submit a written request in respect of such change or alteration to the Company at RTD's own cost, which request shall specify whether RTD shall, or reserves the right to, require the Company to seek funding for such change. The Company shall respond to RTD indicating whether it has any objection to carrying out the proposed change, its estimated "not to exceed" cost of such change, such change's expected impact on the thencurrent baseline schedule for Work or on operation and maintenance activities and any other relevant information. If RTD chooses to proceed with the proposed change, the Company shall prepare a more comprehensive report, which will include the full details of the proposed change implementation and its additional costs (to be paid by adjustment to the Service Payments) and anticipated impact on schedule of Work and operation and maintenance activities. If RTD agrees with the Company's analysis and directs the Company to implement the change, the Company will be entitled to claim the Relief Event and be paid the stipulated compensation. If RTD disagrees with the Company's analysis, it can direct a third party contractor to implement the change, subject to certain conditions. In addition, RTD may request that the Company use its Reasonable Efforts to seek financing for the change from the Company's Lenders or other third party funders. If the Company is unable to secure such financing, the Company shall be obligated to implement the change only to the extent RTD has provided funding for such change.

# Change in Law

Any Change in Law that

(a) constitutes a Discriminatory Change in Law;

(b) will result in a material delay or increase in the cost of carrying out the Work during the Design Build Period;

(c) will result in an increase in the costs of performing the Company's obligations under the Concession Agreement with respect to the Concessionaire-operated Components during the Operating Period; and/or

(d) will have an adverse effect on the financial position of the Company as established in the Financial Model immediately prior to the occurrence of such Change in Law,

will entitle the Company to claim a Relief Event and to receive from RTD the reimbursement for the Incurred Costs resulting from such Change in Law (subject to certain deductions, unless the Change in Law constituted a Discriminatory Change in Law). The payment by RTD of the Incurred Costs will be made by adjustment to the Service Payments. RTD may elect to require the Company to provide funding for any Change in Law Change. If RTD makes such election, the Company shall request from the Lenders or other third party funders or financial institutions the provision of funds to finance the changes required by any Change in Law Change. RTD has agreed that the Lenders may refuse the provision of any such funding in their sole discretion and that the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for implementing any Change.

## **Relief Events**

Relief Events include:

(a) any delay in granting Vacant Possession of any part of any Site beyond the time limits specified in the Concession Agreement, or granting Vacant Possession subject to restrictions of use and/or right of entry permits in either case not specified in the description of Vacant Possession, or failure to satisfy beneficial occupancy requirements with respect to a certain Site;

(b) any failure by a Utility Owner to perform its obligations with respect to relocation of any utility which such Owner is obligated to relocate;

(c) any failure by RTD to timely remove and/or relocate any utility which RTD is obligated to relocate;

(d) certain disputes with third parties with respect to Concessionaire Design Submittals, to the extent that it is subsequently determined, in accordance with the procedures set out in the applicable Third Party Agreement, that the Concessionaire Design Submittals submitted to that Project Third Party do comply with the applicable requirements;

- (e) certain other failures by third parties with respect to Concessionaire Design Submittals;
- (f) any Unidentified Archaeological Remains discovered by the Company at any Site;
- (g) any Unidentified Environmental Condition encountered by the Company at any Site;
- (h) any Unidentified Geological Obstruction encountered by the Company at any Site;
- (i) any Unidentified Endangered Species encountered by the Company at any Site;
- (j) the implementation of a Change or a Change in Law Change or similar circumstances;
- (k) any willful misleading of the Company related to deficiencies in Reference Data;
- (l) a violation of Law or permit by RTD;
- (m) a failure of RTD to timely obtain for the Company the benefit of permits required to be obtained by

RTD;

- (n) the discovery of any Unidentified Utility;
- (o) any change in voltage of the primary power supply drawn from the Utility transmission network;

(p) wrongful suspension by RTD of any part of the Work, or suspension due to the Company's exhausting the amount the Company is permitted to spend on Work prior to the delivery of the Full Phase 1 Notice to Proceed;

(q) certain other disputes with RTD, to the extent resolved in favor of the Company, or failure by RTD to fulfill certain obligations under the Concession Agreement;

(r) the imposition by any Relevant Authority on the Company's possessory interest in the Project of any ad valorem property tax or possessory interest property tax under the Laws of the State of Colorado or any sales or use tax on construction and building materials, equipment, improvements and other property (including tangible personal property), that will be integrated into the Project and owned by RTD;

(s) any failure by RTD to comply with its obligations with respect to the Rolling Stock Option;

(t) any interruption or interference to the Work or the Commuter Rail Services caused by the procurement, design, construction, operation or maintenance of any Other RTD Project;

(u) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Relevant Authority of competent jurisdiction under applicable Law, which issuance is solely as a result of RTD's actions or omissions (and not the Company's actions or omissions), which injunction, order, restraint or prohibition materially affects RTD's or the Company's performance under the Concession Agreement;

(v) the execution by RTD of any Utility Relocation Agreement, Inter-Governmental Agreement, Railroad Agreement or certain Third Party Agreements after the Technical Proposal Due Date on terms non consistent with the agreed forms of such agreements;

(w) failure of certain assumptions regarding the design of the DUS Infrastructure;

(x) any failure by RTD or any third party contractor acting on RTD's behalf to complete any District Retained Environmental Work by the completion date for such Environmental Clean-up Work or any material interruption or interference with the Company's performance of its obligations under the Concession Agreement caused by RTD or any third party contractor acting on RTD's behalf in performing any District Retained Environmental Work;

(y) failure of certain assumptions regarding the applicable Environmental Law; and

(z) (i) RTD does not increase the Maximum Annual Phase 1 Construction Payment Amounts as a result of the failure to achieve the Phase 2 Condition Precedent Satisfaction Date, or (ii) the Company is unable to secure funds to finance the Phase 1 Excess Financing Amount within 90 days after the delivery of a Phase 1 Excess Financing Request,

but, in each case, only to the extent that:

(a) such event or circumstance (and/or its effects and consequences on the Company) does not result from and is not contributed to by any breach by the Company of its obligations under the Concession Agreement or any of the other Project Agreements or any negligent act or omission of the Company;

(b) such event or circumstance has arisen notwithstanding the Company complying with its obligations under the Concession Agreement; and

(c) the Company has complied with the specified mitigation obligations.

# Extension of Time and Other Relief

During the Design Build Period, where the carrying out of the Work has been delayed as a result of the occurrence of a Relief Event during the Design Build Period, the dates for any Revenue Service Target Date, the Revenue Service Deadline Date and/or the Final Completion Deadline Date shall be extended to reflect the impact of the Relief Event on the critical path of the Work. If the occurrence of any Relief Event during the Design Build Period prevents the Company from achieving the Revenue Service Commencement Date in respect of a Commuter Rail Service, then the Revenue Service Commencement Date for such Commuter Rail Service shall be deemed to have occurred for the purposes of the payment of the Service Payment, but for no other purposes, on the date on which the Revenue Service Commencement Date would have occurred but for such Relief Event. During the Operating Period, the Company shall not suffer any impact to the Availability Ratio or accrue any Performance Deductions as a result of such Relief Event where the events giving rise to such Relief Event would, absent such Relief Event, have caused such impact to the Availability Ratio to claim, and be paid by RTD, the Incurred Costs actually incurred by it as a result of the impact of such Relief Event on the Company's performance of the Concession Agreement, and any additional work it is required to carry out as a result of such Relief Event. There is a separate relief mechanism for relief in connection with a Change or Work Order.

# Adjustments to the Service Payment

Following the occurrence of any Relief Event that results in the Company incurring additional capital expenditure or funding, an adjustment to the Service Payment for such Commuter Rail Service will be made in order to restore the respective economic position of the Parties as set out in the Financial Model immediately prior to such occurrence or payment, as the case may be, and, in the case of a Change, to ensure that the Company suffers no reduction in revenue or net income as a result of carrying out such Change. Any Incurred Costs payable by RTD shall

be paid by RTD by direct lump-sum payment or by an adjustment to the Service Payments as soon as possible following the occurrence of the Relief Event; provided that the amount and timing of such adjustment shall be determined by reference to the Financial Model so as to maintain the debt service coverage ratios (and/or other financial ratios) required to be maintained under the Designated Credit Agreements. RTD may elect to require the Company to provide funding for any Incurred Costs payable by RTD. If RTD makes such election, the Company shall request from the Lenders or other third-party funders or financial institutions the provision of funds to finance such Incurred Costs. RTD has agreed that the Lenders may refuse the provision of any such funding in their sole discretion and that the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for any such Incurred Costs. The Company shall use its Reasonable Efforts to comply with any conditions to funding imposed by the Lenders including requesting equity support from the Shareholder, it being understood that the Shareholders may refuse the provision of any such funding in their sole discretion, and that, in such a case, the Company shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for the implementation of any such Incurred Costs. If the Lenders or the Shareholders refuse to provide any funding for the implementation of any such Incurred Costs, RTD shall provide funding for the implementation of any such Incurred Costs, RTD shall provide funding for the implementation of any such Incurred Costs, RTD shall provide funding for the implementation of such Incurred Costs.

### **Force Majeure Events**

Force Majeure Events include the following events or circumstances or any combination of such events or circumstances (subject to certain conditions and qualifications):

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, in each case involving, imminently threatened within or directly affecting the United States of America, provided that where only threatened, the actions taken by the Company must be reasonable in view of and proportionate to the threat;

(b) the occurrence of force majeure under any Third Party Agreement or action (including a Change in Law) taken by any Project Third Party (or their respective agents or contractors) or any other Relevant Authority, in response to a threat to, or event affecting, the public health, safety, security or the Environment, in each case, the effect of which is to suspend, delay or disrupt the performance by the Company of any of its obligations under the Concession Agreement;

(c) revolution, riot, insurrection, civil commotion, sabotage or terrorism, provided that, where only threatened, the actions taken by the Company must be reasonable in view of and proportionate to the threat;

(d) strikes or industrial action unless they are solely restricted to employees of the Company, any Project Contractor and/or their respective Subcontractors;

(e) nuclear explosion, radioactive or chemical contamination or ionizing radiation or electromagnetic pulse or biological contamination of any Site, unless the source or cause of the explosion, contamination, radiation, pulse or hazardous material is brought to or near such Site by the Company, the Design Build Contractor or any Design Build Subcontractor or any of their employees, servants, agents or consultants;

(f) fire, explosion, sonic boom, storm, flood, earthquake, landslide or severe weather but only where it causes material and unavoidable damage to all or any material part of any Site, the Work (including materials procured for use therein) or the Concessionaire-operated Components or otherwise causes the Concessionaire-operated Components to be unusable or substantially unusable;

(g) any failure, shortage or outage of power supplied by the power network;

(h) a legally imposed quarantine, against which the affected party could not reasonably have been expected to take precautions, and which prevents or delays the performance by the Affected Party of its obligations under the Concession Agreement; (i) embargo or trade sanctions having an adverse effect on the performance of the Concession Agreement; and

(j) any other event outside the reasonable control of the Affected Party, and which was not reasonably foreseeable by the Affected Party as at the date of the Concession Agreement, where such event materially and unavoidably prevents or delays the Affected Party from performing any of its obligations under the Concession Agreement.

# Relief from Liability

None of the parties will be liable for any failure to comply, or delay in complying, with any obligation under or pursuant to the Concession Agreement to the extent that such failure or delay is caused directly by a Force Majeure Event, provided that no such relief may be claimed in respect of any obligation to pay any amounts that may from time to time become owing thereunder. If occurring during the Operating Period, RTD shall continue to pay the Service Payment without deduction in respect of the effects of the Force Majeure Event, and the Company shall not suffer any impact to the Availability Ratio or accrue any Performance Deductions as a result of the Force Majeure Event where the events giving rise to the Force Majeure Event would, absent a Force Majeure Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue. If occurring during the Design Build Period, where the performance of the Work has been delayed as a result of the occurrence of a Force Majeure Event, the dates for any Revenue Service Target Date, the Revenue Service Deadline Date and/or the Final Completion Deadline Date shall, to the extent necessary, be extended as agreed by the parties to reflect the impact of the Force Majeure Event on the critical path of the Work. If the occurrence of a Force Majeure Event or Force Majeure Events during the Design Build Period prevents the Company from achieving the Revenue Service Commencement Date for a Commuter Rail Service, then the relevant Revenue Service Commencement Date shall be deemed to have occurred for the purposes of the payment of the Service Payment, but for no other purposes, on the date on which the Revenue Service Commencement Date would have occurred but for the Force Majeure Event or Force Majeure Events, as applicable, for such Commuter Rail Service.

# Damage and Restoration

If any part of the Concessionaire-operated Components shall be damaged or partially destroyed, the Concessionaire will be obligated to undertake the restoration, to the extent of insurance proceeds or funds provided by RTD, unless RTD (acting reasonably taking into account all circumstances including the amount of the available insurance proceeds) determines that the restoration of the damaged Concessionaire-operated Components is not feasible.

# **Termination of the Concession Agreement**

### **Concessionaire Termination Events**

The Concessionaire Termination Events include the following, among others:

(a) the Company fails to commence the Work within four months after the Phase 1 Effective Date;

(b) the Revenue Service Commencement Certificate in respect of any Commuter Rail Service is not, or there is no reasonable prospect of it being, issued on or before the Revenue Service Deadline Date;

(c) the Final Completion Certificate in respect of any Commuter Rail Project is not, or there is no reasonable prospect of it being, issued on or before the Final Completion Deadline Date;

(d) the Company abandons the Work and (A) the Company expressly declares in writing that it will not resume the Work or (B) such abandonment continues for 90 consecutive days without prior written consent of RTD;

(e) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking liquidation, reorganization or other relief in respect of any of the Company, the Shareholders, the Design Build

Contractor (during the Design Build Period), the Rolling Stock Supplier (during the Design Build Period) or the O&M Contractor (during the Operating Period) or any of their debts, or of a substantial part of their assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (or similar proceedings);

(f) any of the Company, the Shareholders, the Design Build Contractor (during the Design Build Period), the Rolling Stock Supplier (during the Design Build Period or the Operating Period) or the O&M Contractor (during the Operating Period) shall voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (or similar proceedings);

(g) the operation of the Concessionaire-operated Components by the Company in a manner violating applicable Law or the Concession Agreement and endangering the safety of passengers following a written notice from RTD outlining such safety concerns;

(h) any failure by the Company to obtain and maintain sufficient committed funding for the Eagle Project (i) during the Design Build Period or (ii) after the last Final Completion Date, in the event there are any material cost overruns for which the Company is required to secure funding, which failure to obtain and maintain sufficient committed funding would, with the passage of time, reasonably be expected to result in a separate Concessionaire Termination Event, in either case (i) or (ii), which failure has not been remedied by the Company within a period of 90 days following its occurrence;

(i) the Design Build Contract is terminated during the Design Build Period, the Rolling Stock Supply Contract is terminated during the Design Build Period or the Operating Period and/or the O&M Contract is terminated during the Operating Period and the Company has not entered into a replacement O&M Contract or Design Build Contract or, as the case may be, the Design Build Contractor has not entered into a Replacement Rolling Stock Supply Contract, in any such case, with a reputable counterparty reasonably acceptable to RTD within 90 days following the date of termination of the Design Build Contract and/or the O&M Contract and/or within 60 days following the termination of the Rolling Stock Supply Contract (as applicable);

(j) the Company sells, transfers, leases or otherwise disposes of all or any part (which has a material adverse effect on the Company's ability to carry out its obligations under the Concession Agreement) of its undertakings, properties or assets by a single transaction or a number of transactions without the prior consent of RTD (such consent not to be unreasonably withheld or delayed);

(k) the Company fails to provide Handover Security as applicable;

(l) the noncompliance with any share transfer restrictions or any change in control limitation;

(m) the Company fails to comply in any material respect with specified provisions of the Concession Agreement;

(n) any of the Project Agreements other than the Concession Agreement:

(i) ceases to be in full force and effect or no longer constitutes the valid, binding and enforceable obligations of the Parties thereto other than RTD (other than due to the termination of such Project Agreement, or an involuntary bankruptcy event or a voluntary bankruptcy event, in each case as defined in such Project Agreement); or

(ii) is materially amended, varied or departed from (other than in accordance with the Concession Agreement),

and this materially adversely affects the ability of the Company to perform its obligations under the Concession Agreement, or any right of RTD under the Concession Agreement, or its ability to enforce any such right, or to perform its obligations under the Concession Agreement;

(o) the Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Rail Electrified Segment Service as a single Commuter Rail Service for purposes of clause (ii) below) is less than (i) 80% in two or more months between the applicable Revenue Service Commencement Date and the applicable Final Completion Date or (ii) 85% in six or more months of any eight-month period (provided in each case that a single, continuous event lasting no more than 30 days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80% or 85%, as applicable, shall be deemed to have resulted in an Availability Ratio less than 80% or 85%, as applicable, in the first such month only);

(p) the Performance Deduction Percentage exceeds 3% of the Adjustable Base Service Payment for the relevant month in six or more months of any eight-month period; and

(q) any breach of any other material obligations of the Company under the Concession Agreement (but only to the extent such breach (i) is not the subject of Performance Deductions, (ii) has not resulted in any impact on the Availability Ratio and (iii) is not otherwise the subject of penalties or deductions under the Concession Agreement) or any written repudiation of the Concession Agreement by the Company.

# **Consequences of a Concessionaire Termination Event**

Subject to the terms of the Lenders' Direct Agreement and the applicable cure periods, upon the occurrence of a Concessionaire Termination Event and so long as such event is continuing, RTD may (a) in the case of certain Concessionaire Termination Events, serve notice of default on the Company and require the Company to (i) remedy the breach specified in such notice of default within a certain specified time period or (ii) propose within twenty (20) days following such notice of a default a reasonably-detailed remedial plan, or (b) in the case of certain other Concessionaire Termination Events, terminate the Concession Agreement with immediate effect (among other available remedies).

# **RTD** Termination Events

The RTD Termination Events include the following, among others:

(a) other than as a result of any failure to appropriate (by inclusion in its annual or any interim budget) monies for the purposes of the RTD Appropriation Obligations, RTD fails to pay any undisputed amount within 10 days after the due date;

(b) the Board fails, by the end of a Fiscal Year, to make an appropriation (by inclusion in its annual or any interim budget) of monies for the purposes of the RTD Appropriation Obligations (other than any Applicable Termination Amount) pursuant to the Concession Agreement in an amount sufficient to fund the RTD Appropriation Obligations (other than any Applicable Termination Amount) estimated to fall due, or that have fallen due, during such Fiscal Year;

(c) a Discriminatory Change in Law or a Change in Law, but only where RTD is not providing compensation to the Company to compensate it for the effects of the Discriminatory Change in Law or Change in Law, as required by the terms of the Concession Agreement; and

(d) the obligations of RTD under the Concession Agreement are or become illegal, unenforceable, void or voidable, and as a result, RTD is or becomes unable to perform its material obligations under the Concession Agreement.

## **Consequences of an RTD Termination Event**

Subject to specified cure periods, upon the occurrence of an RTD Termination Event, the Company may terminate the Concession Agreement in its entirety.

## Termination for Extensive Force Majeure or Failure to Issue Full Phase 1 Notice to Proceed

Either party has the right to terminate the Concession Agreement in the case of an Extensive Force Majeure by a 7-day notice to the other party, or if RTD has not delivered the Full Phase 1 Notice to Proceed by December 31, 2011. In addition, RTD has the right to terminate the Concession Agreement if, in the absence of the Full Phase 1 Notice to proceed, the Company has given a notice of the expenditures on Work exceeding the amount that the Company is allowed to spend on Work prior to the delivery of the Full Phase 1 Notice to proceed, as described above.

## **Compensation Following Termination**

See the section "Applicable Termination Amount" below for the description of various amounts which will be due and payable by RTD in the case of an early termination of the Concession Agreement. Any Applicable Termination Amount shall be due and payable by RTD 60 days after the Termination Date. To the extent not paid by RTD 60 days after the Termination Date, certain components of the Applicable Termination Amount shall be re-calculated, while other components shall accrue interest at specified rates. No default interest shall accrue on any RTD Default Amount, Concessionaire Default Amount or FM Termination Amount other than with respect to certain components as determined and set forth in the Concession Agreement.

## Financing of the Applicable Termination Amount

Unless the Applicable Termination Amount is paid by RTD in full 60 days after the Termination Date, from the Termination Date and until the Expiry Date, RTD shall pay to the Company in respect of the Applicable Termination Amount the TABOR Portion in accordance with the Trustee's Instructions during the applicable calendar year for which TABOR Portion amounts are set forth in the Concession Agreement, pro rata on a monthly basis during such calendar year on the fifth Business Day of each month during such calendar year in an aggregate amount (together with any Additional TABOR Portion amounts or other amounts paid by RTD to the Company in respect of the Applicable Termination Amount) not to exceed the Applicable Termination Amount. Following the Expiry Date (if RTD has not paid the Applicable Termination Amount in full to the Company) and only until RTD has paid the Applicable Termination Amount in full to the Company, the payment of such Applicable Termination Amount shall continue to be secured by the pledge of the RTD Pledged Revenues and the Trustee's Instructions, and RTD shall continue to pay to the Company that portion of the Applicable Termination Amount which, on the Expiry Date, was secured as the TABOR Portion and any Additional TABOR Portion. See "PAYMENTS UNDER THE CONCESSION AGREEMENT—RTD Appropriation Obligations" for the description of the Additional TABOR Portion.

## **Applicable Termination Amount**

# Applicable Termination Amount Following Termination for Concessionaire Termination Event

#### - Applicable Termination Amount for Termination during the Design Build Period

If the Concession Agreement is terminated due to a Concessionaire Termination Event during the Design Build Period, the amount payable by RTD as termination compensation shall equal an amount not to exceed the aggregate amount of 100% of Lenders' Liabilities then owing equal to:

(a) all Project Implementation Costs incurred by the Company until the Termination Date (excluding any prepayment costs and fees or make-whole amounts or breakage costs calculated by reference to the Financial Model as at Financial Close) as verified by the Independent Engineer;

## less

(b) any amount standing to the credit of any bank account held by or on behalf of the Company that has not been applied to the costs of performing the Company's obligations under the Concession Agreement;

#### less

(c) the aggregate amount of Construction Payments made by RTD under the Concession Agreement;

less

(d) the Projected Rectification Costs as determined by an independent third party expert appointed jointly by the Parties;

#### less

(e) the reasonable and verifiable costs incurred by RTD (i) with respect to the expert determination referenced above, and (ii) in replacing the Company with a suitable substitute contractor (including the costs incurred in carrying out any re-letting process).

# - Applicable Termination Amount for Termination after the Design Build Period

If the Concession Agreement is terminated due to a Concessionaire Termination Event after the Design Build Period, the amount payable by RTD as termination compensation shall be the greater of:

(a) an amount not to exceed the aggregate amount of Lenders' Liabilities then owing equal to:

(i) all Project Implementation Costs incurred by the Company until the Termination Date (excluding any prepayment costs and fees or make-whole amounts or breakage costs calculated by reference to the Financial Model as at Financial Close) as verified by the Independent Engineer;

less

(ii) the value of the accrued amortization of the Project Implementation Costs; and

(b) 80% of the Lenders' Liabilities,

in either case (a) or (b),

## less

(c) the Projected Rectification Costs as determined, by reference to the Termination Date, by an independent third party expert appointed jointly by the Parties,

## less

(d) the reasonable and verifiable costs incurred by RTD (1) with respect to the expert determination referenced above, and (ii) in replacing the Company with a suitable substitute contractor (including the costs incurred in carrying out any re-letting process).

# Applicable Termination Amount Following Termination for the RTD Termination Event or upon Failure to Deliver the Full Phase 1 Notice to Proceed

If the Concession Agreement is terminated due to an RTD Termination Event, or upon failure by RTD to deliver the Full Phase 1 Notice to Proceed by December 31, 2011, or in the case RTD elects to terminate the Concession Agreement if the Company has given a notice that the Company has exhausted the amounts the Company is allowed to spend on Work in the absence of the Full Phase 1 Notice to Proceed, the amount payable by RTD as termination compensation shall equal the aggregate, calculated at the Termination Date (and re-calculated on each anniversary of the Termination Date until payment of the Applicable Termination Amount in full, in accordance with the provisions of the Concession Agreement) of:

(a) the Lenders' Liabilities as at that date;

(b) an amount equal to the Equity Market Value less the documented costs expended to conduct the independent third-party expert appraisal described in the definition of Equity Market Value;

(c) any subcontractor breakage costs; and

(d) any reasonable and verifiable costs and expenses of enforcement or protection or preservation of security properly incurred by the Lenders from the Termination Date to the date of payment by RTD.

# Applicable Termination Amount Following Termination for Extensive Force Majeure Event

If the Concession Agreement is terminated due to an Extensive Force Majeure Event, the amount payable by RTD as termination compensation shall equal the aggregate, calculated at the Termination Date (and re-calculated on each anniversary of the Termination Date until payment of the Applicable Termination Amount in full, in accordance with the provisions of the Concession Agreement), of:

(a) the Lenders' Liabilities as at that date;

(b) all amounts paid by the Shareholders or their Affiliates in relation to the Project Implementation Costs in the form of capital contributions to the share capital of the Company or as Subordinated Debt up until the Termination Date less any amounts actually received by the Shareholders or their Affiliates from the Company as Distributions or any such amounts that were permitted under the Designated Credit Agreements to be paid to Shareholders but were not so paid as at the Termination Date; provided that all the amounts payable by RTD described in this paragraph (b) shall be paid free and clear of any applicable tax imposed on or to be deducted by the Company; provided further that if the amount calculated in accordance with this paragraph (b) is less then zero, then such amount shall be deemed to equal zero;

(c) any subcontractor breakage costs; and

(d) any reasonable and verifiable costs and expenses of enforcement or protection or preservation of security properly incurred by the Lenders from the Termination Date to the date of payment by RTD.

# Handover and Reinstatement Work Requirements on the Expiry Date

The Company shall, on the Expiry Date, hand over and, to the extent not already owned by RTD, transfer ownership of title to the Concessionaire-operated Components free of all Encumbrances and free of charge to RTD in a condition which could reasonably be expected of an equivalent commuter rail system which has been in existence and operated for a period equal to the period during which the relevant Commuter Rail Project has been operated and which has been maintained in accordance with the O&M Standards during that period and is capable of complying with the O&M Standards (as amended pursuant to the terms of the Concession Agreement) for a period of (a) with respect to the Commuter Rail Network, three years, and (b) with respect to the Rolling Stock, one year, in each case from the Expiry Date.

## **Dispute Resolution**

## **Designated Senior Representatives**

Subject to certain exemptions, the disputes between the parties under the Concession Agreement will be resolved as follows: upon the referral by either Party of any Dispute for resolution, the Designated Senior Representative of each Party will meet and use all Reasonable Efforts to resolve the Dispute between the Parties for a period of at least 15 days; and if the Designated Senior Representatives of each Party are unable to resolve the Dispute within such 15-day period, unless the Parties agree to extend the period for negotiation between the Designated Senior Representatives, either Party may refer the Dispute:

(a) if such Dispute is within the categories of Disputes which may be resolved by a Dispute Resolution Panel, for resolution by the appropriate Dispute Resolution Panel; or

(b) if such Dispute is not within the categories of Disputes which may be resolved by a Dispute Resolution Panel, for resolution by the applicable authority.

# Applicable Authority

If either Party wishes to refer a Dispute for resolution to an Applicable Authority, then either Party may make such reference:

(a) if the amount reasonably claimed by the referring Party equals or exceeds U.S.\$25,000,000, to RTD Court of Colorado for the City and County of Denver; or

(b) if the amount reasonably claimed by the referring Party is less than U.S.\$25,000,000, for resolution through arbitration, as described below.

#### Arbitration

Arbitration shall be commenced by the service of a demand for arbitration, which specifies the nature of the controversy, the nature and extent of damages sought and compliance with any provisions of the Concession Agreement that may be required before arbitration may be requested. The arbitration shall be conducted pursuant to the American Arbitration Association Rules for Commercial Disputes or, if the Parties agree, the American Arbitration Association Rules for Construction Disputes, or any other rules or procedures mutually agreeable between the Parties. The arbitration of the Dispute will be conducted before a single arbitrator appointed by agreement of the Parties within 30 days of the initial Demand for Arbitration. The arbitration will take place in Denver, Colorado and shall be conducted in English. In the event that the Parties are unable to agree to an arbitrator within such 30-day period, the Party making the initial Demand for Arbitration shall submit the Demand for Arbitration to the American Arbitration Association, and the Parties shall thereafter proceed with the arbitration under the administration of the American Arbitration Association. Any arbitration of a Dispute referred by either Party will not be limited to a review of any previous decision or finding of the Dispute Resolution Panel and shall be de novo. Discovery shall be permitted in accordance with the Uniform Arbitration Act, Section 13-22-217, Colorado Revised Statutes. The decision of the Dispute Resolution Panel may be admitted into evidence; if it is so admitted, it shall not be given any greater evidentiary weight than any other relevant and competent evidence submitted by the Parties. The Parties agree to act in good faith to ensure that the hearing is completed within one hundred and twenty (120) days from the date of the Demand for Arbitration, and the arbitrator shall be directed to issue a ruling within thirty (30) days of the date of the completion of the hearing. The arbitrator's award will be in accordance with the laws of the State of Colorado (without reference to choice of law rules) and the terms of the Concession Agreement, and will be in writing and supported by substantial evidence. The arbitrator is empowered to grant provisional remedies and equitable relief to the Parties as necessary and appropriate in the circumstances. To the extent such remedies or relief are necessary against third persons not party to the arbitration, the Parties may apply to a court of competent jurisdiction in the City and County of Denver, Colorado for the same. The arbitration award will provide for the costs of the arbitration. The award of the arbitrator will be final and binding, except as it may be corrected or vacated in accordance with the Uniform Arbitration Act, Section 13-22-217, Colorado Revised Statutes, and judgment may be entered thereon by a court of competent jurisdiction in the City and County of Denver, Colorado.

# **Defined Terms**

Unless otherwise specified or set forth in Appendix B hereto, capitalized terms used in this Appendix C will have the meanings set forth below:

*"Construction Payments"* means (a) following the Early Work Effective Date until the Phase 1 Effective Date, the Early Work Construction Payments and (b) following the Phase 1 Effective Date, the Phase 1 Construction Payments together with, following the Phase 2 Effective Date, the Phase 2 Construction Payments and the Phase 2 Financing Cost Payments.

"Construction Security" or "Concession Agreement Construction Security" means a bond substantially in the form attached as Appendix G to Volume I of the RFP in favor of RTD (or in favor of RTD, the Company, the Agent Bank and the Design Build Contractor as multiple obligees) or a letter of credit or other surety (in such form as may be reasonably required by RTD) in a penal amount equal to not less than the greater of (a) 50% of the total Earned Value of the Work scheduled under the Original Baseline Schedule (or, as the case may be, Revised Baseline Schedule) to be performed under the Design Build Contract and any other contracts entered into by the Company for construction, erection, repair, maintenance or improvement of any building, road, viaduct, tunnel, excavation or other public works in any calendar year in which such contract is performed and (b) 5% of the total Earned Value for all Work not yet performed under the Design Build Contract and any other contracts entered into by the Company for construction, erection, repair, maintenance or improvement of any building, road, viaduct, tunnel, excavation or other public works in any calendar year in which such contract is performed and (b) 5% of the total Earned Value for all Work not yet performed under the Design Build Contract and any other contracts entered into by the Company for construction, erection, repair, maintenance or improvement of any building, road, viaduct, tunnel, excavation or other public works in any calendar year in which such contract is performed, in each case (i) calculated as of the first day of the calendar year, (ii) not including the Phase 1 Work prior to the Phase 1 Effective Date or the Phase 2 Work prior to the Phase 2 Effective Date and (iii) in compliance with Section 38-26-106, Colorado Revised Statutes.

*"Current Baseline Schedule"* means the Original Baseline Schedule or the most recently approved Revised Baseline Schedule including executed cost and schedule changes from approved Changes and Work Orders.

*"Early Work"* means the performance of all Work required for, carried out or executed in or in relation to or in connection with relocations to be performed by the Company in accordance with the plans set forth in the Concession Agreement, such Work to be completed in accordance with such plans and the relevant Railroad Agreements and as described in "PRINCIPAL PROJECT AGREEMENTS–Concession Agreement."

*"Early Work Construction Payment"* means the amount to be paid by RTD following the Early Work Effective Date and prior to the Phase 1 Effective Date.

*"Early Work Effective Date"* means the date on which the following conditions are satisfied or waived in accordance with the Concession Agreement:

(a) the delivery by RTD to the Company of the Early Work Notice to Proceed at any time prior to the Phase 1 Effective Date;

(b) no later than 14 days prior to issuing the Early Work Notice to Proceed, RTD will submit a written request to the Company to deliver (i) the Construction Security with respect to the Early Work only and (ii) to the extent not previously provided, a copy of the Design Build Contract executed by the relevant parties thereto in form and substance acceptable to RTD in accordance with the Concession Agreement, certified by the Company as being a true, complete and accurate copy, together with the applicable corporate documents otherwise required in accordance with the Concession Agreement with respect to the Design Build Contract; and

(c) the Company will deliver to RTD such Construction Security with respect to the Early Work only and, to the extent not previously provided, a copy of the Design Build Contract and the related corporate documents within 10 days after delivery of RTD's request.

*"Early Work Notice to Proceed"* means a written notice in which RTD notifies the Company that the Early Work Effective Date has occurred.

*"Earned Value"* means the Company's budgeted cost of work performed as set forth in the Original Baseline Schedule (or, as the case may be, the Revised Baseline Schedule) and the Schedule of Values in the Concession Agreement and as described in "PRINCIPAL PROJECT AGREEMENTS–Concession Agreement–*Construction and Procurement.*"

*"Equity Commitments"* means the unconditional commitments by the Initial Shareholders to subscribe for share capital in the Company or to provide Shareholder Loans to the Company.

*"Final Completion Certificate"* means the Final Completion Certificate issued by the Independent Engineer pursuant to the Concession Agreement certifying that the Final Completion Date of a Commuter Rail Project has occurred.

*"Final Completion Deadline Date"* means the date falling twenty-four (24) months (or fifteen (15) months for the purposes of the Design Build Contract or the O&M Contract) after the last Revenue Service Commencement Date, as such Final Completion Deadline Date may be amended in accordance with the terms of the Concession Agreement (or the Design Build Contract for purposes of the Design Build Contract or the O&M Contract or the Purposes of the O&M Contract or the O&M Contract for the purposes of the O&M Contract).

"Final Completion Requirements" mean the following requirements:

(a) the relevant Revenue Service Commencement Certificate has been issued;

(b) the Company has demonstrated that the Availability Ratio on such Commuter Rail Service is an average of at least 94% for a period of any six consecutive calendar months commencing after the Revenue Service Commencement Date for such Commuter Rail Service and ending prior to the Final Completion Deadline Date;

(c) the Availability Ratio for such Commuter Rail Service has not fallen below 80% in more than one calendar month (or, if a single, continuous event lasting no more than thirty (30) days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80%, two calendar months) following (and including) the calendar month in which the Revenue Service Commencement Date occurred and the last calendar month of the six calendar month period referred to in clause (b) above;

(d) all Contract Data relating to the operation and maintenance of such Commuter Rail Project and Commuter Rail Service has been submitted to or approved by, as the case may be, RTD and the Project Third Parties (as applicable) in accordance with the Contract Data Requirements List;

(e) certain system performance demonstration progress reports required to be provided by the Company to RTD in accordance with the Concession Agreement for such Commuter Rail Service have been completed by the Company;

(f) the System Testing and Commissioning Plan – Final Revision (referred to as such in the Concession Agreement) has been submitted to and accepted by RTD;

(g) all of the Punch List Items set out in the schedule to the Revenue Service Commencement Certificate for such Commuter Rail Project shall have been carried out;

(h) all demobilization from the relevant Sites is complete (including removal of Temporary Works and equipment used in the performance of the Work and not required for the operation of such Commuter Rail Project);

(i) if the Phase 2 Effective Date does not occur on or before the Phase 2 Condition Precedent Satisfaction Date, with respect to the Final Completion Certificate for the East Corridor Project, the Company shall have delivered all Final Design Submittals to RTD; and

(j) with respect to the last Final Completion Certificate only,

(i) the Company has submitted the last Monthly Progress Schedule to RTD;

(ii) the Company has certified to RTD in writing (and provided such documentary evidence as RTD may reasonably require) that (A) no amounts owing to the Design Build Contractor, the Rolling Stock Supplier and any of their respective Subcontractors remains unpaid (except disputed amounts for which the Company has established adequate reserves in accordance with GAAP) and (B) final settlement of the Design Build Contract has occurred in accordance with Section 38-26-107(1) et seq., Colorado Revised Statutes; and

(iii) all conditions to the return of the Construction Security have been met in accordance with Section 38-26-101 et seq., Colorado Revised Statutes, applicable Law and the terms of the Design Build Contract; and

(k) only with the Design Build Contract, the Independent Engineer has issued Final Completion Certification pursuant to the Concession Agreement.

*"Final Design Submittals"* means the 100% complete drawings, designs, specifications, calculations, reports, plans, procedures and other items and information evidencing the Final Project Design to be submitted by the Concessionaire to, and approved (or deemed approved) by, RTD and, as required, any relevant Project Third Parties.

"Financial Close" means the date the Series 2010 Bonds were issued, authenticated and delivered in accordance with the Original Indenture.

*"Financing Costs"* means, in relation to any calendar month during the Design Build Period following the Phase 2 Effective Date:

(a) interest, commission, fees, premia and any other costs or expenses payable by the Company under the Designated Credit Agreements (including scheduled payments under any hedging agreement);

(b) amounts payable by the Company (other than with respect to principal) under the increased costs, taxes (including withholding taxes), market disruption, stamp duties and indemnities provisions of the Designated Credit Agreements; and

(c) any value added or other taxes payable by the Company (including under gross-up obligations) in respect of the above, in each case for such month.

*"Full Phase 1 Notice to Proceed"* means a written notice issued by RTD authorizing the Company to commence or to permit commencement of the Phase 1 Work without the restrictions contained in the Limited Phase 1 Notice to Proceed.

"Initial Fluor Shareholder" means Fluor Enterprises, Inc., a California corporation.

"Initial Macquarie Shareholder" means Macquarie Holdings, LLC, a Delaware limited liability company.

*"Initial Shareholder"* means (a) any and each of the Initial Macquarie Shareholder and the Initial Fluor Shareholder together as Shareholders holding a 90% and 10% interest, respectively, as Shareholders in the Concessionaire including through any wholly-owned intermediate subsidiaries or (b) any other Person or combination of Persons, which combination may include the Initial Macquarie Shareholder and/or the Initial Fluor Shareholder, together as Shareholders holding a combined 100% interest as Shareholders in the Concessionaire, including through any wholly-owned intermediate subsidiaries in the Concessionaire, including through any wholly-owned intermediate subsidiaries in the Concessionaire, including through any wholly-owned intermediate subsidiaries, in accordance with a change to the Initial Shareholders approved by RTD pursuant to Section 3.11 of Volume I of the RFP and effective prior to or concurrently with the Phase 1 Effective Date.

*"Limited Phase 1 Notice to Proceed"* means a written notice issued by RTD authorizing the Company to commence or to permit commencement of the Phase 1 Work, except for any such Phase 1 Work (a) that requires the Company to enter onto or use the UP Sites or (b) that would, when taken together with all other work undertaken by the Company under the Limited Phase 1 Notice to Proceed, require expenditure or commitment by the Company (and the Design Build Contractor on behalf of the Company) of an amount in excess of the Maximum Limited Phase 1 Work Value.

*"Maximum Annual Phase 1 and Phase 2 Construction Payment Amount"* means the Maximum Annual Phase 1 and Phase 2 Construction Payment Amount as calculated in accordance with the Concession Agreement.

*"Maximum Annual Phase 1 Construction Payment Amount"* means, following the Phase 1 Effective Date and prior to the Phase 2 Effective Date, the aggregate Phase 1 Construction Payments that the Company can claim in any design build calendar year as set forth in the Concession Agreement.

"Maximum Annual Phase 2 Financing Cost Amount" means the Maximum Annual Phase 2 Financing Cost amount as set forth in the Concession Agreement.

*"Maximum Limited Phase 1 Work Value"* means U.S.\$150,000,000 (not including any amounts separately payable by RTD in respect of an RTD Proposed Change, Relief Event or Force Majeure Event), as such amount may be increased in accordance with the Concession Agreement or otherwise at RTD's sole discretion.

*"Monthly Progress Schedule"* means the Current Baseline Schedule updated every month to show the actual progress of Work and the Earned Value of the Work carried out.

*"Original Baseline Schedule"* means the Company's proposed schedule for all capital projects that includes detailed activities describing the Work at the approved WBS level, all of which is the basis for measurement of the Earned Value of each element of the Work carried out over each period and for the Company's projected cash flow.

*"Phase 1"* means (a) the Phase 1 Work, (b) the provision of the East Corridor Service, (c) the operation and maintenance of the East Corridor, DUS to CRMF, the Rolling Stock (excluding the Phase 2 Rolling Stock after delivery by RTD of a Phase 2 Rolling Stock Termination Notice), the CRMF and, from the Actual DUS Access Date, the DUS Rail Segment, (d) subject to Section 5.10(b) of the Concession Agreement, the maintenance of the Gold Line Sites and the Northwest Rail Electrified Segment Sites, and (e) from the later of the Actual DUS Access Date and the Guaranteed DUS Access Date, dispatch of the Heavy Rail Movements on the DUS Rail Segment.

"Phase 1 Conditions Precedent" means each of the following conditions set out in the Concession Agreement:

(a) each of the following has been executed by the relevant parties thereto and is in form and substance acceptable to RTD in accordance with the Concession Agreement, and a copy of each such document, certified by the Company as being true, complete and accurate, has been delivered to RTD:

- (i) the Design Build Contract;
- (ii) the O&M Contract;
- (iii) the Rolling Stock Supply Contract; and
- (iv) the Designated Credit Agreements;

(b) each of the following has been executed by the relevant parties thereto and have become unconditional in all respects (except for any condition relating to the Phase 1 Effective Date occurring under the Concession Agreement):

- (i) the Construction Security;
- (ii) the Memorandum of Lease; and
- (iii) the Lenders' Direct Agreement;

(c) RTD has delivered to the Company a notice accepting the Financial Model and any revisions to the Service Payments contained in the Concessionaire's Proposal in accordance with the Concession Agreement delivered by the Company to RTD immediately prior to Financial Close on the basis that the Financial Model and any such revisions to the Service Payments do not reflect, or RTD otherwise expressly waives its right to reject and accepts, any (i) adjustment to the Base Annual Service Payments that exceed the limits referenced in the RFP and (ii) increase

in credit spreads greater than 60 bps; and following the delivery of such notice, Financial Close has occurred and the Company has delivered to RTD a certificate to that effect;

(d) the Company has delivered to RTD an unrestricted electronic version (and, if requested by RTD, a paper version) of the Financial Model in the form attached to the Concession Agreement, which versions incorporate any amendments agreed between the Parties between the date of the Concession Agreement and the date of delivery of the Financial Model, which date(s) shall be:

(i) on each of the dates that is 10 days prior to, one day prior to and immediately following the date of the pricing of the Series 2010 Bonds; and

(ii) on the date of and immediately prior to Financial Close, incorporating final pricing for the Series 2010 Bonds, the terms of which shall be fixed for purposes of Financial Close, and reflecting the adjustments, if any, to certain principal and total repayment cost limits set forth in the Concession Agreement;

in each case, together with the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by RTD to operate the Financial Model;

(e) the Company has provided RTD with revisions to the Service Payments contained in the Concessionaire's Proposal together with each Financial Model delivered under the Concession Agreement, which such revisions to the Service Payments to incorporate any adjustments or amendments made in accordance with the RFP;

(f) to the extent not previously provided under the Concession Agreement, RTD has provided the Company with evidence that the insurance requirements applicable during the Design Build Period, as set out in the Concession Agreement, with which RTD is responsible for complying on or prior to the Phase 1 Effective Date, have been complied with in full and that the relevant premiums for the required insurance policies have been paid;

(g) to the extent not previously provided under the Concession Agreement, the Company has provided RTD with evidence that the insurance requirements applicable during the Design Build Period, as set out in the Concession Agreement, with which the Company is responsible for complying on or prior to the Phase 1 Effective Date, have been complied with in full and that the relevant premiums for the required insurance policies have been paid;

(h) the Company shall have delivered to RTD evidence that the Equity Commitments have been entered into, in a form satisfactory to RTD;

(i) the Company shall have delivered to RTD such documents and certificates as RTD may reasonably request relating to the organization, existence and good standing of the Company, the authorization of the entry by the Company into the Project Agreements to which it is a party and any other legal matters relating to the Company, the Concession Agreement, the other Project Agreements and the Eagle P3 Project, all in form and substance satisfactory to RTD;

(j) the Company has provided to RTD legal opinions, addressed to RTD, from external legal counsel .

as to:

- (i) organization and existence of the Company;
- (ii) due authorization and execution of the Concession Agreement;
- (iii) obtaining of all required consents and approvals with respect to commencing the Work;

(iv) enforceability of, and absence of conflicts with respect to, the Concession Agreement and the other Project Agreements; and

(v) the absence of material litigation;

in each case in form and substance reasonably satisfactory to RTD;

(k) RTD has provided to the Company:

(i) a legal opinion from the general counsel to RTD, addressed to the Company, the Lenders and the Initial Shareholders, in substantially the form attached to the Concession Agreement, and

(ii) a legal opinion from external legal counsel to RTD, addressed to the Company, the Lenders and the Initial Shareholders, in substantially the form attached to the Concession Agreement, as to compliance of the Concession Agreement with Article X Section 20 and certain other relevant provisions of the Colorado Constitution;

(1) the representations and warranties of the Company set out in the Concession Agreement were correct when made and are correct at the Early Work Effective Date and the Phase 1 Effective Date;

(m) the representations and warranties of RTD set out in the Concession Agreement were correct when made and are correct at the Early Work Effective Date and the Phase 1 Effective Date; and

(n) the Company has delivered to RTD a certificate signed by the chief financial officer of the Company, confirming that the accounting practices to be used by the Company are consistent with GAAP.

"Phase 1 Construction Payment" means each installment payment of the sum of the Maximum Annual Phase 1 Construction Payment Amounts, with respect to Phase 1, following the Phase 1 Effective Date and prior to the Phase 2 Effective Date.

"Phase 1 Effective Date" means the date on which all Phase 1 Conditions Precedent set out in the Concession Agreement are satisfied in accordance with the Concession Agreement.

*"Phase 1 Excess Financing Amount"* means the amount of additional private financing required to fund the completion of the Phase 1 Work (calculated by reference to the Financial Model) and all incremental costs in the event that the Phase 2 Notice to Proceed is not issued, and the Maximum Annual Phase 1 Construction Payment Amounts are not increased in accordance with the Concession Agreement (or U.S.\$468,369,318.00).

*"Phase 1 Excess Financing Request"* means the request by RTD to the Company for the Company to use Reasonable Efforts to secure debt financing from Lenders and equity support from the Shareholders equal to the Phase 1 Excess Financing Amount on terms consistent in all material respects with the Financial Model as at Financial Close if the Phase 2 Condition Precedent is not satisfied on or before the Phase 2 Condition Precedent Satisfaction Date.

"Phase 1 Notice to Proceed" means a written notice in which RTD authorizes the Company to commence or to permit commencement of the Phase 1 Work.

*"Phase 1 Rolling Stock"* means rolling stock demonstrated in the Rolling Stock Fleet Management Plan by the Company, Design Build Contractor and/or the O&M Contractor, as the case may be, to be necessary to support the service requirements for Commuter Rail Services on the East Corridor in accordance with the O&M Specifications.

"Phase 1 Work" means all performance and work required for, carried out or executed in or in relation to or in connection with, the design, construction, procurement and completion of the East Corridor Project, DUS to CRMF and the Commuter Rail Maintenance Facility and the BNSF Relocation Work (including the Early Work), and, following the delivery of a Third Party Option Notice, if any, the Third Party Option(s) set forth therein, the Final Project Design, the procurement and installation of the DUS Systems on the DUS Rail Segment Site and the procurement of the Rolling Stock, in each case as described in the Scope Document, including any applicable Temporary Work. "Phase 1 Work Commencement Date" means the date on which the Company advises the Design Build Contractor that RTD has issued the Phase 1 Notice to Proceed.

*"Phase 2"* means (a) the Phase 2 Work, (b) the provision of the Gold Line Service and the Northwest Rail Electrified Segment Service and (c) the operation and maintenance of the Gold Line and the Northwest Rail Electrified Segment.

*"Phase 2 Condition Precedent"* means the delivery by RTD of the Phase 2 Notice to Proceed to the Company prior to the Phase 2 Condition Precedent Satisfaction Date.

"Phase 2 Condition Precedent Satisfaction Date" means December 31, 2011, as such date may be extended in accordance with the Concession Agreement subject to the Company's receipt of the Design Build Contractor's consent (such consent not to be unreasonably withheld or delayed).

*"Phase 2 Construction Payment"* means each installment of the sum of the Maximum Annual Phase 1 and Phase 2 Construction Payment Amounts following the Phase 2 Effective Date.

"Phase 2 Effective Date" means the date on which each Phase 2 Condition Precedent set out in the Concession Agreement is satisfied in accordance with the Concession Agreement.

"Phase 2 Financing Cost Payment" means each installment of the sum of the Maximum Annual Phase 2 Financing Cost Amounts.

*"Phase 2 Notice to Proceed"* means a written notice in which RTD notifies the Company that RTD has received commitments of or reasonably expects to receive funding in the form of federal grants or other state and/or local funds in an amount not less than the aggregate of all Maximum Annual Phase 2 Construction Payment Amounts, RTD states that the Phase 2 Effective Date has occurred for purposes of the Concession Agreement, and RTD specifies such date.

"Phase 2 Rolling Stock" means rolling stock demonstrated in the Rolling Stock Fleet Management Plan by the Company, Design Build Contractor and/or the O&M Contractor, as the case may be, to be necessary to support the service requirements for Commuter Rail Services on the Gold Line and Northwest Rail Electrified Segment in accordance with the O&M Specifications.

*"Phase 2 Rolling Stock Termination Notice"* means the notice delivered by RTD to the Company prior to the scheduled delivery date of the first Phase 2 Rolling Stock under the Original Baseline Schedule (or, as the case may be, the Revised Baseline Schedule) notifying the Company of the location or locations for delivery of the Phase 2 Rolling Stock.

*"Phase 2 Work"* means all performance and work required for, carried out or executed in or in connection with, the design, construction, procurement and completion of the Gold Line Project and the Northwest Rail Electrified Segment Project, in each case as described in the Scope Document, including any applicable Temporary Work.

"Phase 2 Work Commencement Date" means the date the Company delivers to the Design Build Contractor or the O&M Contractor, as applicable, a copy of the Phase 2 Notice to Proceed received from RTD at any time prior to December 31, 2011, which date is intended to be the same date as the date on which RTD delivers such notice to the Company.

"Punch List Items" means Work of a minor nature which does not affect beneficial occupation or safe use of the Commuter Rail Network or part thereof by the Company or members of the public and, where agreed with RTD, any other Work in connection with or related to a Commuter Rail Project which remains incomplete at the Revenue Service Commencement Date for such Commuter Rail Project and associated Commuter Rail Service.

"Railroad Agreement" means any agreement entered into between RTD and any Heavy Rail Operator in relation to the Eagle P3 Project.

*"Railroad Rehabilitation and Infrastructure Financing Program"* means the federal program described in "PRINCIPAL PROJECT AGREEMENTS-Concession Agreement" herein.

"Revenue Service Commencement Requirements" mean the following:

(a) except with respect to certain Punch List Items identified in the Concession Agreement (or with respect to the Design Build Contract, the items on the Concessionaire's Punch List), such Commuter Rail Project (excluding any of the automated fare system equipment for the Commuter Rail Projects as described in the Concession Agreement related thereto) has been completed in accordance with the provisions of the Concession Agreement, the Project Requirements and Good Industry Practice (or for purposes of the Design Build Contract, the Design Build Contract, the Project Requirements and Good Industry Practice) to ensure that the Work, such Commuter Rail Project and each part of them are completed and operate in compliance with the Project Requirements;

(b) the process and procedures set out in the Scope Document for the testing, inspection and verification of the Work has been carried out (including demonstrating that each element of the Concession Equipment forming part of such Commuter Rail Project operates as intended) have been carried out;

(c) the System Performance Demonstration for the relevant Commuter Rail Service has been fully carried out;

(d) during the System Performance Demonstration, the Availability Ratio (calculated on a daily basis for the duration of the relevant period) for such Commuter Rail Service is at least 95% for a consecutive 21-day period and at least 97% for a consecutive seven-day period within such 21-day period;

(e) all Permits required to be obtained (or for purposes of the Design Build Contract, required to be obtained by the Design Build Contractor pursuant to the Design Build Contract) for the commencement of operations of such Commuter Rail Project and such Commuter Rail Service have been obtained in final form and are not subject to appeal;

(f) all required Concessionaire Design Submittals (or for the purposes of the Design Build Contract, Contractor Design Submittals) and Contract Data relating to the operations and maintenance of such Commuter Rail Project have been submitted to, and, if required, approved by, as the case may be, RTD, the Project Third Parties and the Relevant Authorities (as applicable) in accordance with the Scope Document and the Contract Data Requirements List;

(g) the procedure for the training and certification of operating and maintenance personnel and staff with respect to the operation and maintenance of the Concessionaire-operated Components has been completed in accordance with the requirements set out in the O&M Specifications;

(h) the Company (or for purposes of the Design Build Contract, the Design Build Contractor) has fully implemented the Safety and Security Certification Plan with respect to such Commuter Rail Project and has submitted to RTD (following the Company's review thereof), in form and substance satisfactory to RTD and the appropriate Relevant Authorities, the relevant certificates of compliance and all other safety and security certification certificates or assessments with respect to such Commuter Rail Project (including the FHLA), together with all supporting documents;

(i) the Final Threat and Vulnerability Analysis has been completed by the Company (or for purposes of the Design Build Contract, the Design Build Contractor) and approved by the FTA and the FRA;

(j) all deficiencies or noncompliance (other than Punch List Items) identified by RTD following any audit carried out pursuant to the Design Build Contract have been corrected;

(k) if RTD has delivered a Phase 2 Rolling Stock Termination Notice in accordance with the Concession Agreement, the Company (or for purposes of the Design Build Contract, the Design Build Contractor) has complied with its obligations set forth in the Design Build Contract; and

(l) only with respect to the Design Build Contract, the Revenue Service Commencement Requirements have been satisfied under the Concession Agreement as evidenced by the issuance by the Independent Engineer of the Revenue Service Commencement Certificate.

*"Revenue Service Deadline Date"* means (i) if the Phase 2 Notice to Proceed is issued, January 1, 2018, as such date may be extended in accordance with the terms of the Concession Agreement and/or the Design Build Contract, as the case may be, and (ii) if the Phase 2 Notice to Proceed is not issued, July 29, 2017.

*"Revenue Service Target Date"* means: (a) with respect to the East Corridor Service, January 29, 2016; (b) following the Phase 2 Effective Date with respect to the Gold Line Service, July 1, 2016; and (c) following the Phase 2 Effective Date, with respect to the Northwest Rail Electrified Segment Service, March 31, 2016; in each case as such Revenue Service Target Date may be extended in accordance with the terms of the Design Build Contract.

*"Revised Baseline Schedule"* means the schedule submitted by the Company on October 1 of each year and otherwise at RTD's request showing actual progress to date on all activities in the Current Baseline Schedule.

*"Rolling Stock Option"* means the option in which RTD may require the Company to purchase from the Rolling Stock Supplier and deliver to and commission for RTD the Rolling Stock Option Cars no less than eight and no more than 24 additional Cars.

*"Rolling Stock Option Cars"* are the additional Rolling Stock (no less than eight (8) and no more than twenty-four (24)) that may be purchased by RTD according to the Rolling Stock Option.

*"Schedule of Values"* means the list of items on the WBS Pricing Form with their individual budgets as provided in the Concessionaire's Proposal and as updated from time to time by the Company (a) to incorporate budget allocation details for sub-items identified in the Final Design Submittals and Revised Baseline Schedules (*provided* that no such update shall increase the total value of assets specified on the WBS Pricing Form or the total Earned Value for the purpose of calculating Construction Payments under the Concession Agreement), (b) in accordance with the Concession Agreement or (c) as otherwise agreed between the Parties.

"*Temporary Work*" means all temporary structures and installations required for the performance of the Work and the Early Work, including fences, roads, parking, buildings, staging and storage areas.

"UP Site" means any Site or part thereof, the rights to which RTD will acquire pursuant to the specified agreements entered or to be entered into by RTD and the Union Pacific Corporation (including its Affiliates) after the date of the Concession Agreement.

"WBS" or "Work Breakdown Structure" means a hierarchical breakdown of work scope by location, type and task.

"WBS Pricing Form" means the WBS pricing form submitted by the Company as part of the Concessionaire's Proposal.

*"Work"* means (i) following the Early Work Effective Date until the Phase 1 Effective Date, the Early Work, (ii) following the Phase 1 Effective Date, the Early Work and the Phase 1 Work, and (iii) following the Phase 2 Effective Date, the Early Work, Phase 1 Work and Phase 2 Work.

# APPENDIX D

## SUMMARY OF CERTAIN PROVISIONS OF THE LENDERS' DIRECT AGREEMENT

The following is a summary of selected provisions of the Lenders' Direct Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to and is subject to the full text of such agreement.

## Overview

The execution of the Lenders' Direct Agreement by RTD in favor of The Bank of New York Mellon Trust Company, N.A., together with its successors in such capacity, as Agent Bank (as defined in the Concession Agreement), was a condition precedent to the Phase 1 Effective Date and to the issuance of the Series 2010 Bonds.

## **Consent to Security**

RTD acknowledges the assignment of, and the grant of the security interest in and first-ranking lien over, all of the Company's right, title and interest in, to and under the Concession Agreement and the other Project Agreements to which the Company is a party and the grant of the security interest by DTH in its equity interests in the Company pursuant to the applicable Security Documents, which have been submitted to RTD for its consent under the Concession Agreement.

# Notice of Termination

RTD shall give the Trustee written notice promptly upon becoming aware of the occurrence of any event giving rise to RTD's right to (a) terminate or give notice terminating the Concession Agreement, or exercise any rights upon the occurrence of a Concessionaire Termination Event or any step-in rights under the Concession Agreement; or (b) suspend the Company's performance (including in connection with any insolvency or bankruptcy proceeding in relation to the Company) under the Concession Agreement.

## Lender Notice

The Trustee shall notify RTD (a) promptly upon becoming aware of any Default or Event of Default, specifying the circumstances and nature of the Default or Event of Default, and (b) of any decision to accelerate amounts outstanding or exercise any enforcement remedies under the Financing Documents.

## **Payments**

RTD shall make payment of any Service Payments, any Post-Termination Service Amounts and any other amounts payable by RTD to the Company pursuant to the Concession Agreement (other than any amounts to be advanced by RTD to fund Restoration Work) to an account designated by the Trustee, and the Company agrees that any payment made in accordance herewith shall constitute a complete discharge of RTD's relevant payment obligations to the Company.

## **No Termination During Cure Period**

RTD agrees not to terminate or give notice terminating the Concession Agreement or exercise any corresponding termination rights; suspend the Company's performance under the Concession Agreement; or take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of, or any similar insolvency procedure in relation to, the Company, or for the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Company or for any part of the Company's Property, in each case in respect of a Concessionaire Termination Event, during any period available to the Company to rectify such Concessionaire Termination Event as set forth in the Concession Agreement or prior to the expiry of the period during which the Company or the Trustee, as the case may be, may effect a cure of any such Default (such period, the "Cure Period"); *provided* that RTD shall not be prevented from taking actions permitted under the Lenders' Direct

Agreement in respect of any other prior Concessionaire Termination Event which has occurred and has not been remedied or waived.

During any Cure Period, the Trustee shall have the right (but not the obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty or obligation required of the Company under the Concession Agreement, or to cure any default of the Company thereunder, which performance or cure by or on behalf of the Trustee shall be accepted by RTD in lieu of and in satisfaction of the Company's obligations under the Concession Agreement, but no such performance by or on behalf of the Trustee shall be construed as an assumption by the Trustee or any Person acting on the Trustee's behalf of any of the covenants, agreements or obligations of the Company under the Concession Agreement.

## **Step-In Notice**

Provided that all unperformed obligations of the Company identified in a notice provided by RTD shall have been remedied in full or waived by RTD, the Trustee may give written notice to RTD at any time during any Cure Period nominating any one of the Trustee, a Lender or any of its respective Affiliates or any Person approved by RTD in its discretion, as a Qualified Substitute Concessionaire to become an additional obligor (an "Additional Obligor"), jointly and severally liable with the Company under the Concession Agreement and the Lenders' Direct Agreement on and from the date it executes an accession agreement and submits it to RTD thereby commencing the step-in period, which such period shall terminate upon the earliest of (a) the approval of a substitute, (b) the date the Additional Obligor provides a step-out notice, (c) the termination of the Concession Agreement in accordance with the provisions of the Concession Agreement and the Lenders' Direct Agreement.

#### **Rights and Obligations on Step-in**

During the step-in period, the Additional Obligor is deemed to be a party to the Concession Agreement and the Lenders' Direct Agreement, and shall be jointly and severally liable with the Company for the payment of all sums due from the Company and for the performance of all of the Company's obligations under the Concession Agreement. During such period, RTD undertakes not to terminate or give notice terminating the Concession Agreement or exercise any corresponding termination rights; suspend the Company's performance under the Concession Agreement; or take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of, or any similar insolvency procedure in relation to, the Company, or for the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Concession Agreement. RTD shall owe its obligations under the Concession Agreement and the Lenders' Direct Agreement to the Company and such Additional Obligor jointly. The Company shall not be relieved from any of its obligations under the Concession Agreement by reason of any Additional Obligor becoming party to the Concession Agreement.

# Step Out

Upon giving not less than 30 days' prior written notice to RTD, an Additional Obligor may terminate and shall be released from its obligations to RTD under the Concession Agreement and the Lenders' Direct Agreement except for any obligation or liability arising on or before the expiry of such notice. The obligations of RTD to such Additional Obligor shall also terminate upon the expiry of such notice.

## Substitution Proposal by the Lenders

The Trustee may give a substitution notice to RTD at any time during any Cure Period or step-in period, in which the Trustee proposes to assign the rights and obligations of the Company under the Concession Agreement and the Lenders' Direct Agreement to a substitute designated by the Trustee. Such assignment shall be effective upon, after reviewing all information regarding the proposed substitute required to be provided by the Trustee, the approval by RTD of the substitute as a Qualified Substitute Concessionaire. Upon approval, the substitute shall execute a substitute accession agreement and shall become a party to the Concession Agreement and the Lenders' Direct Agreement in place of the Company. The Company shall be immediately released from its obligations which shall be immediately and automatically transferred to the substitute and RTD shall (a) owe its obligations under the Concession

Agreement and the Lenders' Direct Agreement to such substitute in place of the Company and any Additional Obligor and (b) enter into an equivalent direct agreement on substantially the same terms as the Lenders' Direct Agreement with the Company replaced by the substitute.

## **Revival of Remedies**

If a District termination notice has been given, the grounds for that notice are continuing and have not been remedied or waived and the Cure Period relating thereto ends and (a) no Additional Obligor or substitute becomes a party to the Concession Agreement and the Lenders' Direct Agreement, or (b) an Additional Obligor becomes a party to the Concession Agreement and the Lenders' Direct Agreement but the step-in period relating to such Additional Obligor ends without a substitute becoming a party thereto, then, upon the expiry of such Cure Period or such step-in period, as the case may be, RTD shall be entitled to act upon any and all grounds for termination or suspension available to it in relation to the Concession Agreement in respect of defaults under the Concession Agreement not remedied or waived; pursue any and all claims and exercise any and all remedies against the Company; and if and to the extent that it is then entitled to do so under the Concession Agreement, take or support the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of, or any similar insolvency procedure in relation to, the Company, or for the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Company or for any part of the Company's Property.

#### **Obligation to Execute New Concession Agreement**

If the Concession Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Company and, within 180 days after such rejection or termination, the Trustee shall request and certify in writing to RTD that the Trustee or the Trustee's permitted designee or assignee, including a Qualified Substitute Concessionaire, intends to perform the obligations of the Company as required under the Concession Agreement, RTD will execute and deliver to the Trustee a new concession and lease agreement on terms and conditions substantially similar to the Concession Agreement, pursuant to which RTD shall agree to perform the obligations to have been performed by RTD under the Concession Agreement for the balance of the remaining term of the Concession Agreement before giving effect to such rejection or termination.

## Termination

The Lenders' Direct Agreement shall remain in effect until the earliest to occur of (a) the date on which all of the Company's obligations under the Financing Documents have been irrevocably discharged in full; (b) the time at which all of RTD's obligations and liabilities under the Concession Agreement and the Lenders' Direct Agreement have expired or have been satisfied in accordance with the terms thereof; and (c) any assignment to a substitute has occurred and an equivalent direct agreement has been entered into.

## Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of the Lenders' Direct Agreement shall not of itself give rise to a right to terminate the Concession Agreement.

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# APPENDIX E

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## **APPENDIX F**

## SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION AND MAINTENANCE CONTRACT

The following is a summary of selected provisions of the O&M Contract relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement.

## **Scope of Services**

The O&M Contractor will perform or cause to be performed any and all services required or appropriate in connection with the operations and maintenance of the Project, including certain pre-operations services and certain specified operations services during the Design Build Period, and will provide all materials, equipment, software, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to perform such services (collectively, the "Services"). Except as otherwise expressly provided in the O&M Contract, the O&M Contractor will assume and comply with all obligations and liabilities set forth in the Concession Agreement to the extent that they relate to the Services on a back-to-back basis (other than those that the Company is prohibited by the Concession Agreement from delegating to the O&M Contractor), and such obligations and liabilities are deemed to be included as part of the O&M Contractor's obligations under the O&M Contract. The O&M Contractor is not required to perform the Services pertaining to the Gold Line Project or the Northwest Rail Electrified Segment Project if the Phase 2 Effective Date is not achieved by the Phase 2 Conditions Precedent Satisfaction Date, and the Company will have no obligation to the O&M Contractor to make any payments relating to such Services.

The procurement and commissioning of "Rolling Stock Option Cars" as provided in Section 31.1 of the Concession Agreement is excluded from the Services and will be the Company's sole responsibility.

# Term

The term of the O&M Contract ends on December 31, 2044 (the expiration of the Concession Agreement), unless the agreement is terminated earlier in accordance with its terms.

#### **Performance Standards**

The O&M Contractor will perform and cause its subcontractors to perform the Services in accordance with (a) the Concession Agreement and the Third Party Agreements (b) the requirements of all applicable laws and permits, (c) the final Project design, the operating and maintenance specifications in the Concession Agreement, environmental requirements and health, safety and security requirements, (d) and operating plan and all other plans and procedures required to be prepared and/or complied with by the Company in accordance with the operating and maintenance specifications in the Concession Agreement, (e) the "Small Business Enterprises" program requirements in the Concession Agreement, and (f) Good Industry Practice. If there is a conflict between any of the above standards, then the O&M Contractor will perform in compliance with the more restrictive standard.

In addition, the O&M Contractor will take all necessary action to ensure the uninterrupted and safe operation of the Commuter Rail Services and operation and maintenance of the Concessionaire-operated Components in accordance with the performance standards described above and will operate and maintain the Project in a manner reasonably calculated (a) to minimize Performance Deductions and Service Task Orders, (b) to maximize the Availability Ratio, and (c) to minimize, consistent with the preceding clauses (a) and (b), the costs and expenditures required to operate and maintain the Project.

## General Obligations of the O&M Contractor

# Mobilization and Testing

<u>Pre-Operations Inspection and Survey of Sites</u>. No later than 90 days prior to the Revenue Service Commencement Date for each Commuter Rail Project, at the Company's request and direction, the O&M Contractor

will participate in an inspection of the Sites to be used in the operation and maintenance of such Commuter Rail Project in order to ascertain which parts of such Sites are required for the performance by the O&M Contractor of its obligations under the O&M Contract. If additional land outside the relevant Sites is required to perform the Services, the O&M Contractor will facilitate the Company's request for such additional land from RTD; provided that no failure or delay by RTD to provide vacant possession of or the right to use such additional land will constitute a Relief Event and the O&M Contractor will not be entitled to any compensation from the Company. If RTD provides the additional land, the O&M Contractor will pay to the Company and RTD any losses or costs incurred by them in requesting and providing the additional land.

<u>Operations Start-Up</u>. The O&M Contractor will participate and cooperate in all commissioning, testing, verification and start-up activities with respect to each Commuter Rail Project, including, at the Design Build Contractor's request, performing discrete components of the commissioning and testing or demonstration, providing start-up personnel for the commissioning and testing and reviewing and providing comments and feedback to the various plans, procedures, reports and documentation prepared by the Design Build Contractor related to the commissioning and start-up of the Project.

<u>Final Completion Testing</u>. The O&M Contractor will be responsible for the achievement by each Commuter Rail Project of the following final completion requirements prior to the date that is fifteen (15) months after the final Revenue Service Commencement Date (as such date may be extended in accordance with the O&M Contract):

(a) the Availability Ratio on the Commuter Rail Service is an average of at least 94% for a period of six consecutive calendar months commencing after the Revenue Service Commencement Date for the Commuter Rail Project, and ending prior to the date that is fifteen (15) months after the final Revenue Service Commencement Date (as such date may be extended in accordance with the O&M Contract); and

(b) the Availability Ratio for the Commuter Rail Service has not fallen below 80% in more than one calendar month (or, if a single, continuous event lasting no more than 30 days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80%, two calendar months) following (and including) the calendar month in which the Revenue Service Commencement Date occurred and the last calendar month of the six calendar month period referred to in clause (a) above.

The O&M Contractor will be excused from any failure to cause the final completion requirements to be satisfied if the failure results from a failure of the Design Build Contractor to comply with its obligations under the Design Build Contract.

# Maintenance and Repairs

The O&M Contractor shall at all times maintain and repair the Concessionaire-operated Components (a) in accordance with Good Industry Practice and to a standard that restores the failed or damaged item to a condition which meets the requirements of the operating and maintenance specifications and the operating plans, procedures and programs required under the Concession Agreement, (b) in a manner that causes the minimum amount of disruption to the operation of the Concessionaire-operated Components, to the Company, to RTD and to the Project Third Parties, and (c) so that, at the expiration of the Operating Period, the Concessionaire-operated Components have the residual life required by the Concession Agreement.

The O&M Contractor will plan scheduled maintenance on the Project so as to minimize the disruption to the operation of the Concessionaire-operated Components. The O&M Contractor will comply with the procedures set forth in the O&M Contract if any maintenance or repair work will necessitate an interruption or restriction of passenger services on the Concessionaire-operated Components.

## **Emergencies**

The O&M Contractor is obligated to respond as soon as possible to accidents and other emergencies and take immediate and diligent action in accordance with applicable law and good industry practice to attempt to prevent or

minimize such accidents or other emergencies, and otherwise will comply with the notification procedures set forth in the O&M Contract.

# **Operation of Fare System Equipment**

The O&M Contractor acknowledges that under the Concession Agreement, RTD is responsible for the fare system equipment and for the collection of all fares, and that RTD will determine in its sole discretion the level and structure of fares, ticketing and all other aspects of generating fare revenue and have all right and title to the collected fares.

# Electrical Energy

Subject to the provisions of the O&M Contract, the O&M Contractor will (a) pay for all electrical power used in the performance of the Services and all electric power used for operations and maintenance of the Commuter Rail Network and the Rolling Stock except for costs of Traction Power, which are to be paid by RTD in accordance with the Concession Agreement, and (b) coordinate and interface with the operator of the power network regarding the ongoing supply of electrical power.

# **Physical Security**

The O&M Contractor will provide the necessary security and fare inspection services and make all necessary arrangements to ensure the protection of the Concessionaire-operated Components from damage, and the protection of the safety and security of all passengers and staff on the Concessionaire-operated Components in accordance with the operating requirements under the O&M Contract.

# Dispatch of Heavy Rail Movements; Interface with Heavy Rail Operators

From and after the Actual DUS Access Date, the O&M Contractor will be responsible for the dispatch of all Heavy Rail Movements, in accordance with the operating requirements of the O&M Contract. The O&M Contractor will operate and maintain the Concessionaire-operated Components without impairing, disrupting or interfering with the activities or operations of any Heavy Rail Operator.

# Labor Matters

The O&M Contractor will provide all labor, professional, supervisory, administrative and managerial personnel as are required in connection with the Services. Such personnel will be trained and skilled, competent, experienced and appropriately qualified to perform their duties in accordance with good industry practice, with wages and benefits competitive with the industry. The O&M Contractor will appoint a project manager and other key personnel who may not be replaced or removed without the Company's consent except under limited circumstances. The O&M Contractor may be liable for liquidated damages for failure to hire and retain such key personnel in accordance with the O&M Contract. The project manager will have the power and authority to act on behalf of the O&M Contractor in regards to the performance of the Services, except he or she will not have the power to approve, or bind the O&M Contractor to, any amendment, supplement, waiver or other modification to the O&M Contract. The Company is entitled to require the O&M Contractor to remove and replace any of the O&M Contractor's staff or personnel (a) found in possession on the Sites or any Concessionaire-operated Components of firearms, alcohol or illegal drugs, (b) violating any criminal law involving moral turpitude or threats or harm to persons or property, (c) performing his or her duties in a grossly negligent manner, or (d) whose conduct in his or her interactions with RTD or in the course of performing his or her duties has materially impaired or prejudiced the Company's relationship with RTD, passengers or the public at large. In addition, the Company may request the O&M Contractor to remove and replace any of the O&M Contractor's staff or personnel for poor performance or other grounds. The O&M Contractor will offer an ongoing training program to ensure that the O&M Contractor's personnel are capable of meeting the standards for performance of the Services. The O&M Contractor will be responsible and liable for all labor relations matters of the O&M Contractor and Subcontractor personnel relating to the Services and will use reasonable efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the Services.

## **Permitting**

The O&M Contractor shall procure and maintain in full force and effect throughout the Operating Period (including renewing, replacing, extending the validity of and arranging necessary amendments to) all permits required in connection with its performance of the O&M Contract, excluding only certain specified permits which RTD will obtain to the extent provided in the Concession Agreement, and those permits required to be procured and maintained by the Design Build Contractor. Any delay or disruption to or increase in the costs of the performance of the Services or an interruption or impairment of the operation of the Concessionaire-operated Components caused by a failure of or delay by the O&M Contractor to procure and maintain permits will be the sole responsibility of the O&M Contractor.

## **Project Sites**

<u>Generally</u>. The O&M Contractor will not use any project site for any purpose other than for the purposes of carrying out its obligations under the O&M Contract. The O&M Contractor will assume care, custody and control of the Concessionaire-operated Components, together with all relevant sites or portions thereof, upon the occurrence of the Revenue Service Commencement Date for each Commuter Rail Project. From any such Revenue Service Commencement Date through the end of the Operating Period, the O&M Contractor will be solely responsible for the sites or portions thereof and the ongoing maintenance thereof.

Acceptance of Sites. Under the O&M Contract, the O&M Contractor accepts the sites (including the geotechnical, climatic, hydrological, ecological, environmental and general conditions of the sites, the nature of the ground and subsoil, the form and nature of such sites, the risk of injury or damage to property near to or affecting each such site and to occupiers of such property, Utilities and other structures on or near the sites) on an "as-is, where-is" basis, and the O&M Contractor will not be excused from the performance of the Services for any reason relating to the condition of the sites and the related rights to use such sites except as otherwise provided in the O&M Contract. The Company expressly disclaims any responsibility for, and the O&M Contractor expressly waives its right to seek any increase in the Monthly Operator's Fee or other compensation for, any conditions at or on any site except as provided in the O&M Contract.

Site Conditions. The O&M Contractor is entitled to seek a Modification for a Relief Event under the O&M Contract if (a) any Unidentified Archaeological Remains, any Unidentified Geological Obstructions, any Unidentified Endangered Species or any Unidentified Environmental Conditions are discovered at a project site, each which delays, or increases the cost of, performance of the Services or causes the O&M Contractor to undertake additional Services or (b) RTD carries out, or engages third party contractors to carry out, the RTD Retained Environmental Work and materially interrupts or interferes with the O&M Contractor's performance of the Services; provided that such relief will be available to the O&M Contractor only to the extent it had care, custody and control of the relevant site at the time the discovery was made and only to the extent RTD also provides relief to the Company for such event under the Concession Agreement. The O&M Contractor is also entitled to seek a Modification for a Relief Event in respect of the discovery of an Unidentified Utility, which may allow the O&M Contractor to be compensated for incurred costs resulting from delays or disruptions to the Services or necessitated by the acquisition of replacement property.

If prior to or following the commencement of the Services, the Company or the O&M Contractor discovers or causes the presence of an Environmental Condition on any Site or adjacent areas, the O&M Contractor is required to carry out all work relating to the removal, remediation and clean-up at its cost in accordance with the procedures set forth in the O&M Contract that are identical to the respective procedures set forth in the Concession Agreement, provided that if RTD approves the clean-up report, the O&M Contractor can seek reimbursement from the Company of the costs incurred relating to such clean-up.

## **Rolling Stock Replacement**

Subject to the provisions of the O&M Agreement, the O&M Contractor will maintain, repair and replace consumable and life-expired items for, and appropriately rehabilitate or overhaul, the Rolling Stock throughout the Operating Period. The O&M Contractor will cooperate with the Company to facilitate the Company's compliance with its obligations under Section 31.2 of the Concession Agreement with respect to the procurement of replacement Rolling Stock for use by RTD after the Concession Expiry Date. Any request by RTD for assistance from the Company

with respect to the procurement of replacement Rolling Stock will be treated as an RTD Proposed Change, and the O&M Contractor will be entitled to relief with respect to facilitating the Company's compliance with its obligations relating to the replacement Rolling Stock only and to the extent provided by RTD to the Company.

## Restoration

Generally, but subject to limited exceptions, if any part of the Concessionaire-operated Components suffers a Casualty Event, the O&M Contractor is required to repair, rehabilitate and otherwise restore such portion of the affected Concessionaire-operated Components at its cost. In the event that a "Relevant Incident" (as defined in the Concession Agreement) requiring the implementation of a "Restoration Plan" pursuant to Section 40 of the Concession Agreement occurs during the Operating Period, and RTD has elected to implement a Restoration Plan, the O&M Contractor will be required to perform the obligations set forth in such section so as to ensure the Company's compliance thereunder, including, without limitation, the preparation of a bond, letter of credit or other surety, each as required under such section, and the O&M Contractor is entitled to funds provided under such Section 40 of the O&M Contract, the Company may terminate the O&M Contract in the event the Concession Agreement is terminated as a result of the occurrence of a Casualty Event and the Company will pay the O&M Contractor any Operator Termination Payments resulting therefrom, but only to the extent that corresponding amounts have been received by the Company from RTD under the Concession Agreement.

#### **Coordination and Cooperation with other Parties**

The O&M Contractor will keep the Company fully informed regarding coordination and interfacing with Key Third Parties, and accept direction from the Company regarding the same if the Company determines to provide such direction, will deliver the Company copies of all written correspondence with any Key Third Party, and keep the Company informed of all meetings, inspections, tests and other interactions with any Key Third Party and ensure that the Company has the opportunity to attend all such meetings, inspections, tests and other interactions. The O&M Contractor will have the right to attend meetings between the Company and RTD that the Company reasonably expects could affect the O&M Contractor's performance of the Services in any material respect. The O&M Contractor will also cooperate with the Company's other contractors to coordinate the Services with the services or work of the Company's other contractors. At the Company has with a third party, including RTD, on a matter which is or shall become the O&M Contractor's responsibility hereunder. The O&M Contractor, the design-build subcontractor or any utility owner, or any other contractors which may be carrying out work or services in the land adjoining or near any project site for RTD, any Project Third Party or any Relevant Authority. The O&M Contractor will cooperate with the Independent Engineer and Technical Advisor as reasonably requested by the Company.

## **Registers, Plans and Reports**

The O&M Contractor shall prepare and maintain certain registers, plans and reports during the Operating Period, all as specified in the O&M Contract, including an asset register, a site register, an operating plan, a quality management plan, a management and administration plan, a rolling stock fleet management plan, a rolling stock, facility and infrastructure maintenance plan, a safety and security management plan, a system safety program plan, a system security plan (each as defined in the operating specifications in the Concession Agreement) and all other plans, procedures or programs in connection with the performance of the Services required by RTD under the Concession Agreement. Each plan will be submitted to the Company for its approval prior to submission of same to RTD. In addition, the O&M Contractor will maintain and submit to the Company daily, monthly, quarterly and annual operating reports, as well as passenger data.

#### **O&M** Contractor-Caused Hazardous Materials

The O&M Contractor will be responsible for both the cost and implementation of all clean-up, remediation, removal, disposal and mitigation of Hazardous Materials in, on or under the project sites which is caused by or attributable to any acts or omissions of the O&M Contractor or any of its subcontractors in accordance with the

requirements of the O&M Contract and the Concession Agreement, and the O&M Contractor will not be entitled to seek a Modification for a Relief Event in respect thereof. During the period of any clean-up or mitigation activities, the O&M Contractor will continue the Services to the maximum extent possible on unaffected parts of the Project and areas of the project sites.

#### **Intervention by RTD**

If (a) RTD considers that a breach by the O&M Contractor of its obligations under the O&M Contract creates an immediate and serious threat to public health, safety, security or the environment, (b) in the event of an emergency that creates an immediate need and serious threat to public health, safety, security or the environment and the O&M Contractor has not taken steps to remedy or mitigate the effects of the emergency or (c) where RTD has reasonable grounds for concluding that damage to, or a threat to the safety or security on RTD's commuter rail (excluding the Commuter Rail Network), light rail or bus operations is likely to result from the continuation of the O&M Contractor's operation and maintenance of the Concessionaire-operated Components, then in each case, RTD may immediately intervene in the operation and maintenance of the Concessionaire-operated Components and take such reasonable action as it considers necessary, including issuing directions to the O&M Contractor, in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, security or the environment or otherwise to ensure the safety of passengers. RTD may, for this purpose, enter into any part of the Concessionaire-operated Components or the Sites, for such period as is necessary and take over all or any part of the operation and maintenance of the Concessionaireoperated Components, and the O&M Contractor will cooperate with and provide reasonable assistance to RTD.

If the events giving rise to RTD's intervention actions are attributable to a breach by the O&M Contractor of its obligations under the O&M Contract, the O&M Contractor will be responsible for all costs incurred by the Company and for which the Company is responsible to reimburse RTD under the Concession Agreement arising out of RTD's action, and the O&M Contractor will not have any right to claim a Relief Event for such event. However, if the events giving rise to RTD's intervention action is determined to be attributable to a breach by the Company of its obligations under the O&M Contract or by RTD of its obligations under the Concession Agreement, the O&M Contractor may claim a Modification under the O&M Contract.

#### **Review and Monitoring; Remedial Action Plan**

#### **Review and Monitoring**

If, during the Operating Period (a) the Availability Ratio of any Commuter Rail Service is less than an average of 95% for four or more months of any rolling six-month period or (b) the Performance Deduction Percentage exceeds an average of 2.0% of the Adjustable Base Service Payment for four or more months of any rolling six-month period, or (c) a Persistent Condition exists, then in each such case, the O&M Contractor, at the Company's request, will be required to meet with the Company to review the O&M Contractor's operational procedures for the Project and to consider in good faith any recommendations made by the Company for changes to the operations and maintenance of the Project that the Company believes would be expected to enhance reliability or improve operation of the Project. In addition, subject to any increased monitoring rights that may be exercised by the Trustee on behalf of the Owners of the Bonds or RTD, the Company may require the O&M Contractor to provide increased monitoring of the Services as reasonably requested by the Company, or may itself increase its monitoring of the Services.

## **Remedial Plan**

If, during the Operating Period (a) the Availability Ratio of any Commuter Rail Service is less than an average of 90% for four or more months of any rolling six-month period, or (b) the Performance Deduction Percentage exceeds an average of 2.3% of the Adjustable Base Service Payment for four or more months of any rolling six-month period, then in each case the Company may require the O&M Contractor to submit a reasonable remedial plan to the Company that details the actions that will remedy the cause of the failure in performance, the schedule for corrective actions and any mitigating actions that will be taken to minimize the impact on Passengers, which remedial plan must be approved by the Company and the Technical Advisor. The O&M Contractor will diligently implement the remedial plan to rectify the deficiency at its sole cost and expense. The O&M Contractor is also required to comply with all of the Company's obligations with respect to STOs set forth in the operating and maintenance specifications in the

Concession Agreement, including the preparation and implementation of any remedial action plan required thereunder.

## Access and Facilities

The Company and its designees have the right to access and inspect the Concessionaire-operated Components and the Sites at any time and for any reason upon reasonable notice and subject to completion of required safety training and reimbursement of reasonable, out-of-pocket costs incurred by the O&M Contractor resulting from such access or inspection to the extent the Company requires such access more than once per calendar quarter. Unless the Company otherwise directs, the O&M Contractor is also required to grant to RTD, the Independent Engineer, the Technical Advisor, the Project Third Parties and any other Relevant Authority reasonable access to the Concessionaire-operated Components and the Sites for the purposes of carrying out their obligations under the Project Agreements and monitoring the O&M Contractor's performance. In addition, the O&M Contractor will grant to RTD such access to the Commuter Rail Network as RTD requires in order to operate RTD's bus and light rail services and to procure, construct, update and maintain any Other District Project; provided that RTD is to use reasonable efforts to mitigate any material impairment, interference, disruption or other adverse impact from RTD's bus and light rail services on the operation and maintenance of the Commuter Rail Network. The O&M Contractor will make available to RTD and the Company and maintain certain office spaces and related facilities during the Operating Period.

#### **Inspections and Audits**

The O&M Contractor will perform all inspection, expediting, quality surveillance and maintenance of traffic services that are required for performance of the Services on a timely basis, including inspecting all materials and equipment, including the Rolling Stock, both on and off the Sites that comprise or will comprise the Project or that are to be used in performance of the Services. The O&M Contractor will keep the Company informed on an ongoing basis of the performance and quality of all Services and will provide the Company with written reports of deficiencies revealed through such inspections and of measures proposed by the O&M Contractor to remedy such deficiencies. The Company is entitled to be present at and participate in all inspections of the Project, the Services or the Sites undertaken by the O&M Contractor. If the results of any inspection reveal any defect, breach and/or non-compliance, the Company will have the right to make recommendations to remedy such defect, breach and/or non-compliance. The O&M Contractor will remedy such defect, breach and/or non-compliance. The O&M Contractor fails to so remedy, the Company and RTD will have the right to carry out the necessary work at the O&M Contractor's cost and expense.

## **Company's Right to Carry Out Services**

Without prejudice to the right of the Company to suspend the Services or access the project sites or intervene in the operation and maintenance of the Concessionaire-operated Components as provided in the O&M Contract, if the O&M Contractor defaults or neglects to carry out the Services in accordance with the requirements of the O&M Contract or if there are defects or deficiencies in the Services that the O&M Contractor refuses or neglects to repair, then following a cure period, the Company may remedy the same, and the O&M Contractor will reimburse the Company the reasonable costs of implementing such remedy.

## No Amendments Without the O&M Contractor's Consent

The Company will not agree to any modifications of its obligations under the Concession Agreement, any Third Party Agreement or the Design Build Contract that could adversely affect the O&M Contractor's rights and obligations under the O&M Contract or the performance of the Services without the O&M Contractor's prior consent, not to be unreasonably withheld or delayed.

## **Subcontractors**

Subject to the requirements of the O&M Contract, the O&M Contractor may enter into subcontracts for discrete portions of the Services, but may not subcontract the entire Services. The Company will have a right to object to any subcontractors proposed by the O&M Contractor to perform a subcontract requiring the payment of more than

\$3,000,000 in any year. The O&M Contractor will use reasonable efforts to cause all subcontracts to be assignable to the Trustee for the benefit of the Owners of the Bonds. The O&M Contractor is not relieved of any of its obligations or liabilities under the O&M Contract by reason of any subcontract, and the O&M Contractor will remain responsible to the Company for the performance or non-performance of any such contractor.

## Compensation

## **Compensation for Pre-Operations Services**

The O&M Contractor will be paid for the full and timely performance of certain pre-operations services a monthly fee calculated in accordance with Exhibit I attached to the O&M Contract; provided that if the Phase 2 Work Commencement Date occurs under the Design Build Contract, then the amount of the pre-operations fees will be adjusted by an amount equal to 1.5% of any adjustments to the Maximum Annual Phase 1 and Phase 2 Construction Payment Amounts (as defined in the Concession Agreement) made for indexed inflation pursuant to the formulas set forth in Attachment 8(d) to the Concession Agreement) from March 2010 until the Phase 2 Work Commencement Date. With respect to any portion of the pre-operations fees which will be paid through the RTD Construction Payments, the O&M Contractor is entitled to the payment of such fees only to the extent and at such times that the Company has first received such RTD Construction Payments from RTD under the Concession Agreement.

## **Compensation for Operations Services**

As consideration to the O&M Contractor for the full and complete performance of the Services other than the pre-operations services, the O&M Contractor will be paid a Monthly Operator's Fee in an amount calculated in accordance with the methodologies set forth in Exhibit I to the O&M Contract. Generally, the calculation of the Monthly Operator's Fee will track the calculation of and adjustments to Service Payments under the Concession Agreement. The O&M Contractor will be responsible for submitting an invoice every month in the form and with the supporting materials required by RTD or the Company. Any dispute relating to the payment of any amount of the Monthly Operator's Fee claimed by the O&M Contractor in its invoice will be resolved in accordance with the dispute resolution procedures provided in the O&M Contract.

The O&M Contractor will be paid the Monthly Operator's Fee only to the extent that the Company has first received from RTD under the Concession Agreement the corresponding Service Payment (or the portion thereof corresponding to such Monthly Operator's Fee) applicable to the corresponding Services performed by the O&M Contractor. In addition, the Service Payments paid by RTD to the Company under the Concession Agreement will be the sole source of funds that will be used to pay the O&M Contractor the Monthly Operator's Fees, and the aggregate Monthly Operator's Fees and Renewal Work Payments (as defined below) payable in any given calendar year during the operating period will not exceed certain maximum amounts fixed for that year as set forth in Exhibit I to the O&M Contract. Any failure of the Company to pay the Monthly Operator's Fee due to the O&M Contractor will not constitute a breach or default by the Company to the extent resulting from the failure by RTD to make the corresponding Service Payments (or portion thereof corresponding to such Monthly Operator's Fee) where such failure does not result from a delay, breach or failure of the Company; provided, however, that in such event, the O&M Contractor will have the right to require the Company to commence procedures to terminate the Concession Agreement and, absent a cure by RTD of the failure to pay, terminate the Concession Agreement in accordance with its terms. The Company may elect to make direct payment to the O&M Contractor the amounts which RTD has failed to pay, in which case the O&M Contractor's rights as described in the preceding proviso will not apply and the O&M Contractor will continue performance of its obligations under the O&M Contract.

# **Compensation for Renewal Work**

<u>Renewal Work Payments</u>. The O&M Contractor will deliver to the Company a Renewal Work Budget and Schedule (expressed in 2010 dollars) with respect to each element of Renewal Work to be completed during the Operating Period. During the Operating Period on a monthly basis, the O&M Contractor will submit an invoice for the fixed amount of Renewal Work costs set forth in the Renewal Work Budget and Schedule for that month, and the Company will pay the sum so invoiced as a "Renewal Work Payment" (as such sum may be adjusted for inflation and to reflect certain Modifications to the Renewal Work Budget and Schedule resulting from changes to the Service Payments under the Concession Agreement) into a "Renewal Work Account" established by the O&M Contractor within 45 days of the date of invoice. Subject to the O&M Contractor's right to withdraw funds from the Renewal Work Account described below, the O&M Contractor is required to use funds in the Renewal Work Account for Renewal Work only.

The Renewal Work Payments are not subject to adjustment in amount or timing of payment from the corresponding amount and payment schedule set out in the Renewal Work Budget and Schedule unless there is a corresponding adjustment to the relevant Service Payment payable by RTD under the Concession Agreement and such adjustment relates to the performance of the Services by the O&M Contractor and is reflected in a Modification. The O&M Contractor is responsible for funding all Renewal Work costs to the extent the Renewal Work Payments are not sufficient to pay Renewal Work costs incurred or Renewal Work is performed at times other than as scheduled in the Renewal Work Budget and Schedule.

The O&M Contractor will be paid the Renewal Work Payments only to the extent that the Company has first received from RTD under the Concession Agreement the corresponding Service Payment (or the portion thereof corresponding to such Renewal Work Payment) applicable to the corresponding Services performed by the O&M Contractor. In addition, the Service Payments paid by RTD to the Company under the Concession Agreement will be the sole source of funds that will be used to pay the O&M Contractor the Renewal Work Payments. Any failure of the Company to pay the Renewal Work Payments due to the O&M Contractor will not constitute a breach or default by the Company to the extent resulting from the failure by RTD to make the corresponding Service Payments (or portion thereof corresponding to such Renewal Work Payment) where such failure does not result from a delay, breach or failure of the Company.

<u>Forecast Renewal Work Schedule</u>. The O&M Contractor is required to provide to the Company on an annual basis a "Forecast Renewal Work Schedule" for the next succeeding 5 years. The Forecast Renewal Work Schedule and each update thereto is subject to the Technical Advisor's review, and the O&M Contractor is required to revise the Forecast Renewal Work Schedule to the extent it agrees with the Technical Advisor or it is determined pursuant to the dispute resolution procedures that the timing or budget for Renewal Work proposed in the forecast is likely to cause the O&M Contractor to fail to comply with the terms of the O&M Contract or to overrun the budget.

<u>Renewal Works Security for Variance in Forecast Renewal Work Schedule</u>. If at any time during the Operating Period commencing with the year in which the first scheduled element of Renewal Work is to be performed, and continuing through the year in which all the Bonds have been repaid in full, the events described in the following clauses (a), (b) and (c) have occurred:

(a) the amount equal to (i) the costs set forth in the Forecast Renewal Work Schedule for such year less (ii) the costs set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars) less (iii) the amount on deposit in the Renewal Work Account as at January 1 of such year, if a positive number, exceeds the greater of (A) \$1,000,000 or (B) ten percent (10%) of the cost of Renewal Works set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars);

(b) the amount then remaining undrawn in the O&M Letter of Credit less the dollar amount (if a positive number) calculated under clause (a) above is less than an amount equal to 75% of the Required Security Amount then required; and

(c) the Availability Ratio of any Commuter Rail Service was less than 91% in four or more calendar months in any rolling six-month period in the previous year, or the Performance Deduction Percentage exceeded 2.3% of the Adjustable Base Service Payment for the relevant month in four or more months in any rolling six-month period in the previous year;

then, the O&M Contractor will be required to procure an on-demand letter of credit issued by a Qualifying Institution and in a form acceptable to the Company, in a stated amount equal to 100% of the amount calculated in accordance with clause (a) above with respect to such year and with a stated expiration of not earlier than one year from the issuance date (the "Renewal Works Letter of Credit"). The Renewal Works Letter of Credit will secure the O&M Contractor's full and timely payment and performance with respect to Renewal Works. The Company will be entitled to draw on a Renewal Works Letter of Credit, which amounts will be dedicated to the payment of Renewal Works (except to the extent otherwise required by any Designated Credit Agreement, only to the extent the O&M Contractor has failed to implement the relevant Renewal Works in the applicable year in accordance with the most recent Forecast Renewal Work Schedule. If the performance of any Renewal Works has been deferred from the most recent Forecast Renewal Work Schedule by not more than one (1) year with the prior written approval of the Company and the Technical Advisor, then to the extent such Renewal Works is not timely completed taking into account such deferral period, Concessionaire shall be entitled to draw on the Renewal Works Letter of Credit to pay for the performance of such Renewal Works only upon the expiration of such deferral period (which in no event shall exceed one (1) year).

Withdrawal from Renewal Work Account. So long as no O&M Contractor event of default (or a default which with the passage of time, or the giving of notice, or both, will become an O&M Contractor event of default) has occurred and is continuing and the O&M Contractor is not subject to increased review and monitoring by the Company under the O&M Contract, the O&M Contractor is entitled to withdraw funds from the Renewal Work Account annually without having to expend such withdrawn funds on Renewal Work, but solely to the extent that the O&M Contractor has demonstrated to the Company and the Technical Advisor that amounts to be paid to the O&M Contractor over the next five years for Renewal Work pursuant to the Renewal Work Budget and Schedule, plus funds remaining in the Renewal Work Account following any withdrawal as described in this paragraph, is sufficient to meet expenditures anticipated by the then-current Forecast Renewal Work Schedule, and the Technical Advisor has not reasonably objected to such calculations.

<u>Account Control</u>. The Company will hold a first-priority security interest in amounts held in the Renewal Work Account. The Company will be entitled to instruct the transfer of control of the Renewal Work Account following the occurrence and continuance of an O&M Contractor event of default (or a default which with the passage of time, or the giving of notice, or both, will become an O&M Contractor event of default) unless such event of default or default is cured.

## **Relation to RTD Payments**

No undisputed payment required to be paid by the Company to the O&M Contractor under the O&M Contract will be contingent upon or withheld, delayed or reduced on account of the Company's failure to receive any payment from RTD under the Concession Agreement to the extent (a) the Concession Agreement or applicable law does not provide or allow for the Company to seek a corresponding payment due from RTD, (b) any withholding, delay or reduction of RTD's payment to the Company is due to a breach, delay or failure of the Company, or (c) the payment owing to the O&M Contractor is for a Modification requested by the Company, but not requested or required of the Company by RTD.

#### Guaranty

As of the date of execution of the O&M Contract, Fluor Corporation, a Delaware corporation, Balfour Beatty, LLC, a Delaware limited liability company, and Balfour Beatty, plc, a public limited company organized under the laws of England, will each execute and deliver a parent guaranty as security for the O&M Contractor's obligations under the O&M Contract.

#### **Performance Security**

As security for the full and timely performance of its obligations under the O&M Contract, the O&M Contractor shall provide to the Company, not later than the first Revenue Service Commencement Date to occur (or, if earlier, after such time as neither Fluor Corporation nor Balfour Beatty, plc has a long-term credit rating of at least "BBB" or "Baa2" from at least one of Moody's Investors Services, Inc., Standard & Poor's Rating Services or Fitch Ratings, Inc.), an on-demand letter of credit in the amount of \$22,659,628, adjusted annually for inflation (the "Required Security Amount"), issued by a Qualifying Institution (the "O&M Letter of Credit"). Upon (a) the last Final Completion Date for a Commuter Rail Service to occur and (b) the end of the last Warranty Period to expire, the O&M Letter of Credit will be replenished, to the extent previously drawn, to an amount equal to the then-applicable Required Security Amount. The Company will be named as beneficiary of the O&M Letter of Credit, but the Company may assign its rights thereunder to the Trustee as collateral security for the benefit of the Owners of the Bonds. The O&M Letter of Credit will be maintained until the end of the 25th calendar year following the year in which the Operating Period has commenced. Thereafter, subject to the repayment in full of all the Bonds, the O&M Contractor will either (a) replace the O&M Letter of Credit with a performance bond issued by a Qualifying Insurer in a penal amount no

less than 50% of the Required Security Amount, or (b) renew or replace the outstanding O&M Letter of Credit with one or more replacement letters of credit in a face amount equal to 50% of the Required Security Amount. Such replacement security will be maintained until the later of (a) six months after the end of the Operating Period, and (b) such date on which the O&M Contractor has completed all of its obligations under the O&M Contract to the Company's satisfaction. If warranty claims remain unresolved as of the date the O&M Letter of Credit or the replacement security is otherwise permitted to expire, the O&M Letter of Credit or the replacement security will continue to remain in effect at a reduced amount equal to 150% of the cost reasonably estimated by the Company to correct such warranty claims.

## **Limitation on Liability**

The maximum aggregate liability of the O&M Contractor in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise) in connection with the O&M Contract is limited to an amount equal to \$67,978,884, adjusted annually for inflation. The limitation on liability does not apply to the following, among other exceptions: (a) the proceeds of insurance, (b) bankruptcy of the O&M Contractor or abandonment of the Services by the O&M Contractor, (c) the O&M Contractor's indemnity obligations, (d) any deductions to any payment of the Monthly Operator's Fee arising from or attributable to any impact to the Availability Ratio or the accrual of Performance Deductions, (e) any interest due and payable from the O&M Contractor to the Company arising from the O&M Contractor's failure to pay amounts otherwise due, (f) the O&M Contractor's liability for costs and expenses resulting from defects to the Design Build Contractor's work for the period from the expiration of the applicable warranty period through the end of the statute of repose period mandated by applicable law and (g) sums paid by the O&M Contractor to the Design Build Contractor under the Interface Agreement. The Company may immediately terminate the O&M Contract if both (i) the aggregate amounts paid by the O&M Contractor in respect of damages or claims under the O&M Contract exceed the dollar cap on liability, and (ii) the O&M Contractor does not agree to waive the benefits of the cap on liability or increase the amount of the cap on liability in an amount reasonably acceptable to the Company. The O&M Contractor is not entitled to Operator Termination Payments or payment of any other amounts as a result of a termination resulting from the events described in clauses (i) and (ii) above. The O&M Contractor and the Company also agree to waive consequential damages, except as specified in the O&M Contract.

## Warranty

The Services will be performed by qualified personnel, any repair or replacement of parts or components as part of the Services will be performed in a workmanlike manner using good quality components and materials, respecting the common commuter rail operator industry practices, and the Services will satisfy the performance standards described above. Any failure to perform in such manner will constitute a defect or deficiency of the Services, obligating the O&M Contractor to promptly repair or correct the defects or deficiencies at the O&M Contractor's expense (except with respect to ordinary wear and tear). If the O&M Contractor fails to so repair or correct the defect or deficiency, the Company (or RTD pursuant to the Concession Agreement) will have the right to correct the defect or deficiency and perform the Services at the O&M Contractor's expense. In addition, commencing from the expiration of the applicable warranty period and through the end of the statute of repose period mandated by applicable law, the O&M Contractor will be responsible for all costs and expenses resulting from defects, including latent defects, to the Design Build Contractor's work.

The O&M Contractor warrants and guarantees that title to the Project and all Services will pass to RTD free and clear of all liens, claims, security interests and other encumbrances (other than inchoate liens provided by applicable Laws to secure payments not yet delinquent).

To the extent assignable, the O&M Contractor assigns to the Company all vendors' and manufacturers' warranties provided to the O&M Contractor in the performance of its Services. If any such warranty is not assignable, the O&M Contractor will enforce the warranties on behalf of the Company.

## The O&M Contractor's Representations and Warranties

The O&M Contractor makes representations and warranties for the benefit of the Company which are required to be made by the Company in the Concession Agreement for the benefit of RTD (to the extent they relate to

the O&M Contractor and the O&M Contract) (including, without limitation, due organization, power and authority, enforceability, no conflicts, consents and approvals, litigation, financial statements, no change in financial condition, accuracy of the O&M Contractor documents, etc.).

## Insurance

Subject to the terms and conditions set forth in the O&M Contract, the O&M Contractor is required to procure its own insurance with respect to the Services as required in the Concession Agreement. Deductibles and premiums under all insurance policies and all self-insured retentions covering the Project during the Operating Period will be the responsibility of the O&M Contractor unless expressly specified otherwise under the Concession Agreement.

## Indemnity

## The O&M Contractor's Indemnity in Favor of RTD Indemnitees

Subject to any limitations specified in the O&M Contract, the O&M Contractor will indemnify and hold harmless RTD and RTD's directors, officers, agents, servants, consultants, contractors and employees and, to the extent required by the Project Agreements, the Project Third Parties and their respective agents, servants, consultants and employees, from and against all damages to the extent arising out of or in connection with (a) any act or omission of the O&M Contractor or its subcontractors, agents, servants, consultants or employees in connection with the Concession Agreement, the O&M Contract and the other Project Agreements or breach thereof or (b) any willful misconduct of the O&M Contractor or its subcontractors, agents, servants, consultants or employees, including for personal injury, loss or damage to real or personal property and any fines or penalties assessed against RTD.

# The O&M Contractor's Indemnity in Favor of Concessionaire Indemnified Parties

Subject to any limitations specified in the O&M Contract, the O&M Contractor will indemnify, save harmless and defend the Company, the Financing Parties, the Technical Advisor, each of their subsidiaries and affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, from and against any and all damages directly or indirectly arising out of, resulting from or related to (a) claims associated with the operation and maintenance of the Eagle Project, (b) claims for any damage to or destruction of property other than the Project, and (c) claims for death of or bodily injury to, any person, in each case to the extent caused or contributed to by the fault, intentional act, negligence or strict liability of the O&M Contractor, its subcontractors or any of the O&M Contractor's subsidiaries, affiliates and the directors, officers, agents, employees, successors and assigns of each of them, in the performance of the Services.

The O&M Contractor will also indemnify the Company from all damages in favor of any person with respect to payments of taxes relating to the O&M Contractor's income or other taxes required to be paid by the O&M Contractor without reimbursement, or nonpayment of amounts due as a result of furnishing materials or services to the O&M Contractor or any subcontractor in connection with the Services to the extent that the Company has paid the O&M Contractor all undisputed amounts then due and payable, and any liens resulting from such nonpayment.

# Company's Indemnity

The Company will indemnify, save harmless and defend the O&M Contractor, each of its subsidiaries and affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, from and against any and all damages directly or indirectly arising out of, resulting from or related to third-party claims associated with the performance by the Company of its obligations under the O&M Contract to the extent caused by or contributed to by the Company's fault, intentional act, negligence or strict liability in the performance of its obligations or by any breach by the Company of its obligations under the O&M Contract.

# Intellectual Property Indemnification

The O&M Contractor will also indemnify the Company and RTD against all damages, whether direct or indirect, that they incur arising out of a breach of the O&M Contractor's warranties related to intellectual property or

any claims of infringement of intellectual property rights, or if the Company's or RTD's rights and interests provided under the O&M Contract related to intellectual property are at any time determined by a court of law or other competent authority to be invalid, ineffective or impaired in any material respect.

# **Modifications**

## Generally

The Company is not entitled to remove components from the Scope of Services and award such components or any related work to another contractor except in the exercise of its other rights and remedies under the O&M Contract or if required to do so by RTD pursuant to the Concession Agreement. The Company or the O&M Contractor is entitled to seek a modification to the Scope of Services and/or an adjustment to the Monthly Operator's Fee and/or payment or reimbursement of costs and expenses (each, a "Modification") to account for the impact of any Concessionaire Proposed Change, any RTD Proposed Change, any Change in Law Change and any other Relief Event, any proposed deviation from the Project requirements or any delay, breach or failure caused by the Company that delays or disrupts the O&M Contractor's performance of the Services or increases the cost to the O&M Contractor of performing the Services. All Modifications are subject to the consent of RTD, except as provided in the Concession Agreement and the O&M Contract.

## **Company-Initiated Modifications**

If the Company wishes to initiate a Modification, it must give the O&M Contractor a proposal request detailing the change and the O&M Contractor is then required to prepare a Modification proposal with supporting documentation for the Company's approval and in certain cases, RTD's approval, upon which the Company will issue and execute the Modification. If the Company does not approve the O&M Contractor's Modification proposal, the Company may either issue a work order to the O&M Contractor directing the O&M Contractor to proceed with the specified Modification or withdraw its proposal request and pay the O&M Contractor reasonable costs incurred in the preparation of the Modification proposal.

## **O&M** Contractor-Initiated Modifications

The O&M Contractor will not make any changes to, or deviate in any way from, the terms of the O&M Contract and the Project requirements in the carrying out of the Services except as permitted under the procedures for the O&M Contractor-initiated Modifications. Any change proposed by the O&M Contractor is subject to the Company's approval. The Company will be under no obligation to approve a Modification proposal resulting from the occurrence of a Relief Event except to the extent of any relief provided to Concessionaire by RTD under the Concession Agreement corresponding to such Modification proposal, but the Company will, subject to resolution of any objections to the Modification proposal, provide the O&M Contractor may also request the Company to approve a Modification for any material proposed or actual change, deviation, modification, alteration or exception from the Project requirements by submitting for Concessionaire's review a Modification proposal, and the Company will be required to send such Modification proposal to RTD for its consideration. To the extent that any Modification initiated by the O&M Contractor will be entitled to payment of an amount equal to 92.5% of the cost savings received by the Company from RTD.

# **RTD-Initiated Modifications**

RTD has the right to require a Modification (a) to change or alter the operating specifications or, with respect to the Rolling Stock, the Handover and Reinstatement Work Procedures, or (b) to require the Company to operate and maintain any Other RTD Project, to the extent such project constitutes a rail line connected to, or fixtures, facilities or infrastructure incorporated into, the Commuter Rail Network, as an additional element of the Eagle P3 Project (a "<u>Concessionaire-operated Expansion</u>"), in each case by initiating an RTD Proposed Change under the Concession Agreement. In such event, RTD will submit the request for such change to the Company in accordance with the Concession Agreement, which the Company will forward to the O&M Contractor. The O&M Contractor is required to prepare a preliminary written response within 20 days estimating cost and impact of the proposed change and no

later than 15 days following receipt of such response by RTD, RTD is to provide the Company with the change summary notice and the Company and the O&M Contractor will negotiate a mutually acceptable Modification based on such notice. The O&M Contractor is responsible for preparing a change report within 25 days (or within such other time period specified in the O&M Contract) following the receipt of the change summary notice. Under the Concession Agreement, RTD has the right to instruct the Company in the change summary notice to begin to implement the proposed Modification pending preparation and approval of the related change report, in which case the O&M Contractor is required to implement such proposed Modification. In the event RTD does not agree with any matter set out in the change report, RTD may elect to implement the RTD Proposed Change itself or engage one or more third party operators to implement such RTD Proposed Change at its own cost. In such case, the O&M Contractor will be compensated for reasonable costs incurred to third parties and other direct design and engineering incurred costs, in each case incurred in preparing the change report, but only to the extent and at such times as Concessionaire has received same from RTD pursuant to the Concession Agreement. To the extent that the O&M Contractor is hindered from performing its obligations or incurs any incurred costs or delay as a result of the actions of any third party operator employed by RTD to carry out an RTD Proposed Change, the O&M Contractor will be entitled to seek a Modification for a Relief Event.

In the event total combined annual passenger ridership for all Commuter Rail Services exceeds or is below projected ridership by 15% for a period of one (1) year during the Operating Period, the O&M Contractor will provide the Company with a change summary outlining the O&M Contractor's proposal and justification for an adjustment to its Monthly Operator's Fees, and the Company will forward the change summary to RTD for its review in accordance with the Concession Agreement.

#### **Directive Letters**

In the event of any dispute between RTD and the Company regarding the scope of the Company's obligations under the Concession Agreement, RTD may issue a directive letter to the Company directing the Company to perform the work in question, notwithstanding such dispute. Upon the Company's receipt of any such directive letter, the Company will issue a work order to the O&M Contractor and the O&M Contractor will be required to proceed immediately to implement and perform the work in question pending resolution of the dispute between the Company and RTD. If it is determined that the Company was not required to perform the work identified in a directive letter, such directive letter will be deemed to be a Modification implementing the RTD Proposed Change and the O&M Contractor will be entitled to reimbursement of incurred costs in connection with such directive letter.

## **Suspension of Services**

## Suspension for District Failure to Appropriate

The O&M Contractor will be notified if RTD reasonably anticipates that the Board will not include any RTD Appropriation Obligations that are payable or expected to be payable during the following Fiscal Year in RTD's annual budget for such Fiscal Year. Upon receipt of notice, the O&M Contractor will be obligated to suspend or partially suspend, as applicable, operation of the Concessionaire-operated Components to the extent and in the manner directed by RTD. In addition, the O&M Contractor will be required to suspend or partially suspend, in the manner directed by RTD, the operation of the Concessionaire-operated Components if RTD Board fails to include any RTD Appropriation Obligations that are payable to the Company under the Concession Agreement for the following Fiscal Year in its annual budget for such Fiscal Year, such suspension to commence on January 1 of such Fiscal Year. Any such suspension or partial suspension will be treated as an RTD Proposed Change. The O&M Contractor will resume performance of the Services upon appropriation by the Board of adequate funds to meet such RTD Appropriation Obligations, taking into account any additional RTD Appropriation Obligations for the relevant Fiscal Year that have accrued or arisen since the Board's original failure to include the RTD Appropriation Obligations in its annual budget. During any period of suspension or partial suspension as described above in which the Company is paid the TABOR Portion of Service Payments, any TABOR Portions received by the Company will first be allocated to pay debt service then outstanding under the Bonds, with no portion of the TABOR Portion to be applied to the payment of any amounts owing to the O&M Contractor until the debt service then outstanding on the Bonds has been paid in full. During the continuation of a suspension as described above, the Monthly Operator's Fee will be reduced by an amount equal to the avoidable costs which are not being incurred by the O&M Contractor as a result of such suspension to the extent RTD reduces the amount of the corresponding Service Payment pursuant to the Concession Agreement on account of such suspension.

# RTD's Right to Suspend the Services

RTD is entitled under the Concession Agreement to order the suspension of any part of the Services in the event a "Concessionaire Termination Event" under the Concession Agreement occurs and is continuing, all in accordance with and subject to RTD's compliance with the relevant provisions of the Concession Agreement and the terms of RTD's direct agreement with the Trustee on behalf of the Owners of the Bonds.

# **Termination Rights**

# Termination for O&M Contractor Event of Default

<u>O&M Contractor Events of Default</u>. The Company is entitled to terminate the O&M Contract for any of the following reasons (each, to the extent continuing beyond the expiration of the applicable cure period, called an O&M Contractor event of default):

(a) The commencement of an involuntary or voluntary bankruptcy proceeding with respect to any of the O&M Contractor or any Guarantor, and, with respect to an involuntary proceeding, such proceeding continues undismissed for a period of 60 or more days; provided, that if a Guarantor is the subject of a bankruptcy proceeding and the O&M Contractor obtains within thirty (30) days of the event a replacement guaranty on the same terms as the guaranty provided by such Guarantor from another guarantor reasonably acceptable to the Company, then such event will not constitute an O&M Contractor event of default. However, the O&M Contractor will not be required to secure a replacement guaranty pursuant to the preceding sentence if the Bonds have been repaid in full at the time of such event. In addition, if a Guarantor other than Fluor Corporation is the subject of a bankruptcy proceeding, then the O&M Contractor must secure a replacement guaranty only if the Technical Advisor determines that the ability of Fluor Corporation to honor its guaranty is materially less than its ability to do so as of the execution date of the O&M Contract;

(b) The O&M Contractor fails to make payment of any undisputed amounts owed by the O&M Contractor to the Company, and such payment is not made in full within thirty (30) days following written notice;

(c) The O&M Contractor fails, for any reason other than failure of the Company to make payments to the O&M Contractor when obligated, to make payments due to its subcontractors, and such failure is not remedied as required by applicable law;

(d) The O&M Contractor fails to comply in any material respect with any operating requirement under the O&M Contract or requirements of any applicable law or permit in the performance of the Services and such failure is not remedied within fifteen (15) days following written notice;

(e) The O&M Contractor abandons the Services for a period of thirty (30) consecutive days;

(f) The O&M Contractor fails to provide or maintain in effect the O&M Letter of Credit or any replacement security in the required amount and terms, and such failure is not remedied within five (5) days following written notice, or the O&M Contractor fails to provide the Handover Security in the required amount and terms and the Company is unable to cover the amount of the Handover Security by deductions from the Monthly Operator's Fee;

(g) Any Guarantor fails to provide or maintain in effect its guaranty, and such failure is not remedied within five (5) days following written notice;

(h) The O&M Contractor fails to commence pre-operations Services on the Phase 1 Work Commencement Date, and such failure is not remedied within sixty (60) days following written notice; provided, that the availability of the 60-day cure period will not affect the O&M Contractor's obligations or liabilities under the

Interface Agreement should it fail to perform any pre-operations Services from and after the Phase 1 Work Commencement Date;

(i) The O&M Contractor fails to comply with any material insurance requirement and such failure is not remedied within twenty (20) days following written notice;

(j) With respect to any Commuter Rail Project, the O&M Contractor fails to commence the operations Services (A) within five (5) days after the date specified in the operations notice to proceed for such Commuter Rail Project or (B) if later, the date specified by RTD pursuant to the Concession Agreement;

(k) The O&M Contractor operates the Concessionaire-operated Components in a manner violating the O&M Contract and endangering the safety of passengers following a written notice from the Company or RTD outlining such safety concerns;

(l) The O&M Contractor breaches the assignment restrictions set forth in the O&M Contract or its obligations in respect of subcontracting;

(m) Any of the representations or warranties made by the O&M Contractor in the O&M Contract prove to have been materially untrue or incorrect when made to the extent that such breach of representation or warranty has a material adverse effect on the Services or the Project as a whole or the interests of the Company, and such failure is not remedied within thirty (30) days following written notice;

(n) A change in control of the O&M Contractor occurs or is proposed to occur (other than any such change resulting from a bona fide open market transaction in securities effected on a recognized public stock exchange) and RTD requests termination of the O&M Contract as provided in the Concession Agreement;

(o) The Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Rail Electrified Rail Segment as a single Commuter Rail Service) is less than 89% in five or more calendar months of any rolling seven-month period; provided, that a single, continuous event lasting no more than 30 days extending across two calendar months and directly causing the Availability Ratio in both such months to fall below 89%, shall be deemed to have resulted in an Availability Ratio of less than 89% in the first such month only;

(p) The Performance Deduction Percentage exceeds 2.9% of the Adjustable Base Service Payment for the relevant month in five or more calendar months of any rolling seven-month period;

(q) The O&M Contractor fails to deliver a remedial plan or to diligently implement an approved remedial plan, and such failure is not remedied within thirty (30) days following written notice;

(r) With respect to any Commuter Rail Project, the requirements for Final Completion for which the O&M Contractor is responsible are not fulfilled; and

(s) The O&M Contractor otherwise is in default of the Contract Documents and such failure continues for thirty (30) days after written notice or a longer cure period, as may be permitted; provided that in the case of any such default that has a corresponding "Concessionaire Termination Event" under the Concession Agreement, then the cure period will be twenty (20) days after written notice from the Company.

None of the cure periods permitted for an O&M Contractor event of default will exceed the cure period for the corresponding "Concessionaire Termination Event" under the Concession Agreement.

The Company may terminate the O&M Contract immediately with no opportunity for cure or a remedial program upon the occurrence of an event described in clauses (a), (o) or (p). If any other event described in clauses (a) through (s) above has occurred for which a cure period is provided, the O&M Contractor will remedy the default within the applicable cure period or, alternatively, solely in respect of events described in clauses (k) and (l) above, prepare a reasonable remedial program satisfying the requirements of the Concession Agreement and submit the same for the Company's approval, in each case, during which time the Company may not exercise its right to terminate the

O&M Contract. The Company's approval of a remedial program or any agreed amendments to any program will be contingent upon RTD's approval of such program or such amendments. If the O&M Contractor fails to cure a default or the Company believes that urgent action is necessary to cure a default, and the Company elects not to exercise its termination rights, the Company may remedy such default with the cost to be borne by the O&M Contractor. If the O&M Contractor proposes a remedial program and the Company's approval is not obtained or if a remedial program is approved but the O&M Contractor subsequently does not act in accordance with such program, the Company may, if the default is continuing, terminate the O&M Contract with immediate effect.

<u>Termination Payments to the Company</u>. If the Company terminates the O&M Contract as described above and/or RTD terminates the Concession Agreement in accordance with the terms thereof and such termination is a result of a breach by the O&M Contractor of its obligations under the O&M Contract, the O&M Contractor is responsible for paying the following amounts to the Company: (a) costs reasonably incurred by the Company in replacing the O&M Contractor to perform the Services, (b) all direct damages suffered or incurred by the Company as a result of such termination and/or the acts or omissions of the O&M Contractor leading to such termination, including, where the Concession Agreement has not been terminated, the costs and expenses reasonably attributable to the employment of a different operator to fulfill the O&M Contractor's obligations and services, and any loss of Service Payment attributable to any delay in the achievement of the Revenue Service Commencement Date of any Commuter Rail Project as a result of such termination, (c) any damages incurred by the Concessionaire-operated Components in accordance with the terms of the Concession Agreement, and (d) any damages, costs and expenses suffered or incurred by the Company under the Concession Agreement, the Bond financing documents (including principal, interest and other amounts payable thereunder) or any other related agreement as a result of such termination.

<u>Step-In Rights of the Company and RTD Following an O&M Contractor Event of Default</u>. During the continuation of an uncured O&M Contractor event of default, subject to the terms of the direct agreement with the Trustee on behalf of the Owners of the Bonds, the Company may, and RTD has the right to, without prejudice to any of its other rights or remedies, do any of the following: (a) require the O&M Contractor to carry out handover procedures as may be necessary for the Company or RTD to take over the operation and maintenance of the Concessionaire-operated Components; (b) suspend payment of the Monthly Operator's Fee or the Service Payments, as applicable; and (c) without terminating the O&M Contract or the Concession Agreement, as applicable, following any applicable cure or step-in periods afforded RTD or the Trustee, as applicable, suspend the O&M Contractor's operation of the Concessionaire-operated Components, remove the O&M Contractor from any project sites and take over the performance of the Project at the O&M Contractor's cost. Notwithstanding the suspension or removal of the O&M Contractor, the O&M Contractor is not released from its obligations, liabilities or responsibilities under the O&M Contract (except with respect to the suspension) until the O&M Contract is terminated by the Company.

# Termination for Company Event of Default

<u>Company Events of Default</u>. The O&M Contractor is entitled to terminate the O&M Contract for any of the following reasons (each, to the extent continuing beyond the expiration of the applicable cure period, called a "Company event of default"):

(a) The Company makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy proceeding and, with respect to any involuntary proceeding, such proceeding continues undismissed for a period of 60 or more days;

(b) The Company fails to make payment of any undisputed amounts to the O&M Contractor (unless such failure is due to the failure of RTD to make any corresponding payment when due under the Concession Agreement) and such failure continues for thirty (30) days after written notice; and

(c) Only if relief cannot be provided by issuance of a Modification, the Company otherwise is in default or has failed to perform any of its other material obligations under the O&M Contract and such failure continues for thirty (30) days after written notice (or such longer permitted cure period).

Upon the occurrence of a Company event of default under clause (b) above, the O&M Contractor may suspend performance of the Services and, if the Company fails to pay the undisputed portion of the Monthly Operator's

Fee then due and owing within ninety (90) days after written notice of such non-payment, terminate the O&M Contract. Upon the occurrence of a Company event of default under clause (a) above, the O&M Contractor may terminate the O&M Contract to take effect immediately. If the O&M Contractor exercises its right to terminate for a Company event of default, the O&M Contractor will not have the right to terminate less than all of the Services. Any right of the O&M Contractor to terminate the O&M Contract is subject to all cure rights of RTD under the Concession Agreement and of the Trustee pursuant to its direct agreement with the Company and the O&M Contractor.

In the event the O&M Contractor terminates the O&M Contract as described above the Company will pay the following amounts to the O&M Contractor as the O&M Contractor's sole and exclusive remedy: (a) Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor, and (b) Operator Breakage Costs.

# **RTD** Termination of Concession Agreement

If RTD terminates the Concession Agreement as a result of a breach by the Company (and not a result of a breach by the O&M Contractor), the Company will pay the O&M Contractor the O&M Contractor termination payments in an amount equal to (a) the Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor, and (b) Operator Breakage Costs, as the O&M Contractor's sole and exclusive remedy, and hold the O&M Contractor completely harmless for any damages or claims incurred by the O&M Contractor as a result of such termination. To the extent RTD terminates the Concession Agreement as a result of a breach by the O&M Contractor of its obligations under the O&M Contract, the O&M Contractor will compensate the Company for any damages incurred by the Company as a result of such termination, which damages will include return of (but not return on) any equity invested in the Company and any amounts required to be paid by the Company to the Owners of the Bonds which is due and payable as a result of such termination.

## **Other Termination**

Without prejudice to any other provision of the O&M Contract, and subject to the payment in full by the Company to the O&M Contractor of termination payments equal to the sum of (a) the Monthly Operator's Fees which are due and payable to the O&M Contractor for Services performed up to the date of termination and which have not previously been paid to the O&M Contractor, and (b) Operator Breakage Costs, as the O&M Contractor's sole and exclusive remedy, the O&M Contract will automatically terminate and have no further force and effect in the following circumstances:

(a) Subject to the provisions regarding restoration set forth in the O&M Contract, where a force majeure event has occurred and either (i) the consequences of such event are continuing for a period of 180 consecutive days or more or have materially prevented or delayed the Company or RTD from performing a substantial proportion of its obligations under the Concession Agreement for a period of 180 days or more in aggregate within a period of 360 consecutive days; or (ii) the Company or RTD has determined that a restoration plan is unfeasible in accordance with the Concession Agreement, and the Company or RTD terminates the Concession Agreement; and

(b) In the event the Concession Agreement is terminated as a result of an "RTD Termination Event" as defined in the Concession Agreement, or as a result of a termination by either RTD or the Company for RTD's failure to issue a Full Phase 1 Notice to Proceed by December 31, 2011 pursuant to Section 5.13(b) of the Concession Agreement, or as a result of a termination by RTD if it elects not to increase the Maximum Limited Phase 1 Work Value pursuant to Section 5.13(c) of the Concession Agreement.

Operator Breakage Costs will be payable to the O&M Contractor in connection with the termination events described in clauses (a) and (b) above only to the extent the corresponding "Subcontractor Breakage Costs" payable in respect of the "RTD Default Amount" or the "FM Termination Amount" (each as defined in the Concession Agreement), as applicable, (A) are received by the Company from RTD, (B) such amounts are incurred by the O&M Contractor under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on commercially reasonable terms, and (C) the O&M Contractor and any relevant subcontractor have each used its reasonable efforts to mitigate such amounts.

#### **Transition Following Termination**

Upon termination of the O&M Contract, the O&M Contractor will cease to occupy the Project and will deliver up the Project and the project sites and all stocks of spares and consumables as are on hand as of such time to the Company or, if the Company requests, will hand over and transfer ownership of title to the Concessionaireoperated Components to RTD free of all encumbrances and free of charge. The O&M Contractor will also carry out the handover procedures in coordination with the Company and RTD in accordance with the Concession Agreement. During a period of three (3) months immediately following a termination of the O&M Contract, the O&M Contractor will transition the performance of the Services to a replacement operator. Among other tasks, the O&M Contractor will provide full access to the Project and the project sites and to all data and records relating to the Project and the Services, deliver and assign to the Company, RTD or the replacement operator, as the case may be, all of its right, title and interest in and to any subcontracts, purchase orders, bonds and options made by the O&M Contractor in the performance of the Services, and comply with all reasonable requests by the Company, RTD or the replacement operator in connection with taking over the operation and maintenance responsibilities as are necessary to facilitate the orderly transition of duties from the O&M Contractor to the replacement operator. If requested by the Company, the O&M Contractor will make every reasonable effort to cancel any existing subcontracts upon terms satisfactory to the Company. The O&M Contractor will also have certain responsibilities with respect to transitioning its personnel and employees as specified in the O&M Contract.

#### **End-of-Term Handover Responsibilities**

At the expiration of the Operating Period, the O&M Contractor will hand over and, to the extent not already owned by RTD, transfer ownership of title to the Concessionaire-operated Components, free of all encumbrances and free of charge, to RTD in a condition which could reasonably be expected of an equivalent commuter rail system which has been operated for the same period and has been maintained in accordance with the performance standards described above, and is capable of complying with the performance standards for a period of not less than (i) with respect to the Commuter Rail Network, three (3) years and (ii) with respect to the Rolling Stock, one (1) year, in each case, from the Concession Expiry Date. The O&M Contractor will carry out the handover and reinstatement work procedures set forth in the Concession Agreement, including, without limitation, participating in any inspection, examination or review of the Concessionaire-operated Components or project sites, carrying out the reinstatement work, procuring all required warranties with respect to the reinstatement work, obtaining and maintaining the Handover Security, and making timely payment of Handover Amounts, if any, If all or any portion of the Handover Security or Handover Amounts, if any, are not provided by the O&M Contractor as required, the Company will be entitled to deduct such amounts from the Monthly Operator's Fee. The O&M Contractor will ensure that the handover and reinstatement work procedures are fully completed by the expiration of the Operating Period. If the handover and reinstatement work procedures are not completed by such time as a result of the O&M Contractor's or a subcontractor's fault, the O&M Contractor will operate the Concessionaire-operated Components until the handover is completed without being entitled to payment of any Monthly Operator's Fee.

## Assignment

Neither the Company nor the O&M Contractor will have the right to assign or delegate the O&M Contract, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other party in its sole discretion. However, the Company may assign all of its rights and interests in and under the O&M Contract to the Trustee as collateral security for the benefit of the Owners of the Bonds and the O&M Contractor will enter into a direct agreement with the Trustee on behalf of the Owners of the Bonds if requested. The Company also may assign to RTD any or all of its rights under the O&M Contract and the other Contract Documents to the extent required under the Concession Agreement without the O&M Contractor's consent.

## Disputes

#### Generally

With the exception of the disputes relating to a Modification, any dispute between the Company and the O&M Contractor under the O&M Contract not exceeding \$1,000,000 shall be submitted by either of them to binding arbitration by JAMS in Denver, Colorado, unless the parties agree otherwise to another location. Any dispute between

the parties exceeding \$1,000,000 in value will be submitted to the exclusive jurisdiction and venue of the federal and state courts in Denver, Colorado. Each of the parties irrevocably and unconditionally waives trial by jury in any legal action or proceeding or any counterclaim under the O&M Contract.

Any dispute between the Company and the O&M Contractor under the O&M Contract relating to a Modification will be submitted to a fast-track adjudication process agreed in the O&M Contract with the goal of resolving such dispute within 90 days of the O&M Contractor's submission of the applicable Modification.

In addition, any dispute between the Company and the O&M Contractor under the O&M Contract relating to (a) the amount or other terms of any claim to be presented by the Company to RTD under the Concession Agreement as a result of the occurrence of a Relief Event, including an RTD Proposed Change or Change in Law Change, a directive letter or a force majeure event, each entitling the O&M Contractor to claim a Modification, or (b) any other event affecting the O&M Contractor's performance of the Services in respect of which the Company has a right under the Concession Agreement to seek payment or other relief from RTD, the Company may allow the O&M Contractor to participate in the presentation of the claim to and negotiations of the claim with RTD but the Company must allow the O&M Contractor's own benefit under the O&M Contract.

## **Disputes under the Concession Agreement**

Notwithstanding any other provision in the O&M Contract to the contrary, if any issue in dispute between the parties is also the subject of, or relates to, a dispute being, or to be determined by a "Dispute Resolution Panel" or arbitration under the Concession Agreement, the parties will seek to cause their dispute to be consolidated with the dispute resolution process occurring under the Concession Agreement. If such consolidation does not occur, then any ongoing proceeding regarding such dispute will be stayed pending final resolution of the dispute under the Concession Agreement, which resolution will be binding on the parties for all purposes of the O&M Contract.

## Partnering Program

RTD and the Company may use the partnering program provided under the Concession Agreement to consider and address any material or sustained and unforeseeable increases or decreases in operation and maintenance costs and, in the case of any such increases, to the extent that such increases have or are reasonably likely to have a material adverse effect on the ability of the Company to continue to perform its obligations under the Concession Agreement. The O&M Contractor will attend a partnering meeting with RTD and the Company on or about the tenth anniversary following the first Revenue Service Commencement Date to occur and on or about every tenth anniversary thereafter prior to the expiration of the Operating Period to consider any material or sustained increases or decreases in operation and maintenance costs and present any proposed amendments to the Service Payments. The O&M Contractor is entitled to initiate the partnering program process for the purposes described above, in which case, in coordination with the Company, it will prepare and comply with all submittals and attend all meetings with RTD and the Company as required by the terms of the Concession Agreement. If the Company initiates such partnering program process, the O&M Contractor will cooperate with the Company to provide all information and otherwise facilitate the partnering process. If as a result of such partnering program process, the calculation of Service Payments under the Concession Agreement is amended, the O&M Contractor and the Company will execute a Modification that contains amendments corresponding to the amendments being made to the calculation of Service Payments. The O&M Contractor agrees that if an amendment to the calculation of Service Payments results in an increase to the Service Payment at any time such that RTD is required to appropriate additional funds not previously appropriated to pay such increased amount, then the O&M Contractor will be entitled to payment of any corresponding increase to its Monthly Operator's Fees only to the extent that, and at such times as, the Company has received the corresponding increased amount to its Service Payments from RTD.]

#### **APPENDIX G**

## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a summary of selected provisions of the Indenture and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement.

The parties have entered into the Indenture to provide for the issuance of bonds for the purpose of providing the Series 2020 Loan pursuant to the Loan Agreement to the Company, which will be used to give effect to the Refinancing, including the redemption of all outstanding Series 2010 Bonds and the repayment in full of the Series 2010 Loan.

#### **Grant of Trust Estate**

The Issuer, in consideration for the purchase of the Bonds by the Owners and other good and valuable consideration, in order to secure the payment of the Bonds, to secure the performance and observance of all the covenants and conditions set forth in the Bonds and the Indenture, has executed and delivered the Indenture and has pledged and assigned or required to be pledged and assigned, to the Trustee, subject to the Security Documents, for the benefit of the Owners, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date of the Indenture (collectively, the "Trust Estate"):

(a) all right, title and interest of the Issuer (except for Reserved Rights) in and to the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed) and the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed), to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under the Loan Agreement, and any Additional Parity Bonds Issuer Loan Agreement (if executed);

(b) all moneys, Permitted Investments, Acceptable Letters of Credit or Acceptable Surety Policies from time to time held by the Trustee under the Indenture in any fund or account other than (i) the Rebate Fund and (ii) any Defeasance Escrow Account;

(c) any Security Interest created for the benefit of the Trustee on behalf of the Owners of the Bonds under the Security Documents or otherwise, including without limitation the Project Collateral pledged thereunder, and, the present and continuing right of the Trustee to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Trustee is entitled to do under such Security Documents; and

(d) any and all other property, revenues, rights or funds from time to time under the Indenture by delivery or by writing of any kind specially granted, assigned or pledged as and for additional security for any of the Bonds, any Additional Parity Bonds (if issued), the Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement (if executed) in favor of the Trustee, including any of the foregoing granted, assigned, or pledged by the Company, which has been authorized under the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture and the terms of the Lockbox Account Agreement.

## Amounts Received Pursuant to the Lockbox Account Agreement

All funds provided pursuant to the Lockbox Account Agreement for deposit into any fund or account of the Indenture will be available together with other moneys then on deposit in such funds and accounts to be used for the applicable purposes as set forth in the Indenture.

#### Time of Pledge; Delivery of Trust Estate

The creation, perfection, enforcement, and priority of the pledge of revenues by the Issuer to secure or pay the Bonds as provided in the Indenture will be governed by Section 11-57-208 of the Supplemental Act, the Bond Resolution and the Indenture. The revenues pledged for the payment of the Bonds, as received by or otherwise credited to the Issuer, will immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge on the revenues pledged for payment of the Bonds and the obligation to perform the contractual provisions made under the Indenture and in the Bond Resolution will have priority over any or all other obligations and liabilities of the Issuer except as otherwise provided in the Indenture. The lien of such pledge will be valid, binding and enforceable as against all Persons having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such Persons have notice of such liens.

## **Bonds Secured on Equal and Proportionate Basis**

The Trust Estate will be held by the Trustee for the equal and proportionate benefit of the Owners and any of them, without preference, priority or distinction as to lien or otherwise.

#### **Limited Obligations**

The Bonds are special, limited obligations of the Issuer, payable solely from and secured solely by the Trust Estate and are not, and will not be deemed to constitute an obligation, moral or otherwise, of the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit nor the taxing power of the Issuer, the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest on the Bonds. The Owners of the Bonds may not look to any revenues of the Issuer for repayment of the Bonds and the only sources of repayment of the Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement and any Additional Parity Bonds Issuer Loan Agreement (if executed) for the payment of the Issuer or a multiple-fiscal year obligation of the Bonds will not be secured by any encumbrance, mortgage or other pledge of property of the Issuer, other than the Trust Estate. No property of the Issuer, subject to such exception, will be liable to be forfeited or taken in payment of the Bonds. Neither the members of the Board nor any persons executing the Bonds will be liable personally on the Bonds by reason of the issuance thereof.

## **Supplemental Act**

The Issuer has elected in the Bond Resolution to apply all of the Supplemental Act to the Bonds, and the Bonds will recite that they are issued pursuant to the Supplemental Act. Pursuant to Section 11-57-210 of the Supplemental Act, such recital will be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

#### Method and Place of Payment

The Trustee will act as paying agent for the purpose of effecting payment of the principal of, redemption premium, if any, and interest on the Bonds. The principal of, redemption premium, if any, and interest on the Bonds will be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of and the redemption premium, if any, on all Bonds will be payable by check or draft or by such other method as mutually agreed in writing between the Owner of the Bond and the Trustee at maturity or upon earlier redemption to the Owners in whose names such Bonds are registered on the bond register maintained by the Trustee at the maturity date or redemption date thereof, upon the presentation and surrender of such Bonds at the Designated Payment Office of the Trustee. The interest payable on each Bond on any Interest Payment Date will be paid (i) by the Trustee to the Owner of such Bond as shown on the bond register at the close of business on the Record Date, (ii) at the option of any registered Owner of at least one million dollars (\$1,000,000) in principal amount of the Bonds, by wire transfer in immediately available funds on each interest payment date to such Owner thereof upon written notice from such Owner to the Trustee, at

such address as the Trustee may from time to time notify such Owner, containing the wire transfer address (which shall be in the continental United States) to which such Owner wishes to have such wire directed, if such written notice is received not less than twenty (20) days prior to the related interest payment date (such notice may refer to multiple interest payments) or (iii) by such other method as mutually agreed in writing between the Owner of the Bond and the Trustee.

## **Registration of Bonds; Transfer and Exchange of Bonds**

Records for the registration and transfer of the Bonds will be kept by the Trustee as the registrar for the Bonds. The principal of and interest on and Redemption Price of any Bond will be payable only to or upon the order of the Owner or his legal representative (except as otherwise provided in the Indenture with respect to Record Dates and Special Record Dates for the payment of interest).

Upon surrender for transfer of any Bond at the Designated Payment Office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Trustee will enter such transfer on the registration records and will execute and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of a like series, maturity, aggregate principal amount and interest rate, bearing a number or numbers not previously assigned. Fully registered Bonds of the same series, maturity and interest rate but of other Authorized Denominations. The Trustee will execute and deliver Bonds, which the Owner making the exchange is entitled to receive, bearing numbers not previously assigned. The Trustee may require the payment by the Owner of any Bond requesting exchange or transfer of any reasonable charges as well as any taxes, transfer fees or other governmental charges required to be paid with respect to such exchange or transfer.

The Trustee will not be required to transfer or exchange (a) all or any portion of any Bond during the period beginning at the opening of business 15 days before the day of the mailing by the Trustee of notice calling any of the Bonds for prior redemption and ending at the close of business on the day of such mailing, or (b) all or any portion of a Bond after the mailing of notice calling such Bond or any portion thereof for prior redemption.

Except as otherwise provided in the Indenture with respect to Record Dates and Special Record Dates for the payment of interest, the person in whose name any Bond will be registered will be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on or Redemption Price of any Bond will be made only to or upon the written order of the Owner thereof or their legal representative, but such registration may be changed as provided in the Indenture. All such payments will be valid and effectual to satisfy and discharge such Bond to the extent of the sum or sums paid.

Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor will provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Section 6045 of the Code. The Trustee will conclusively rely on the information provided to it and will have no responsibility to verify or ensure the accuracy of such information.

## **Establishment of Funds and Accounts**

The following Funds and Accounts will be created and established (or in the case of clauses (a) and (c), were created and established under the Original Indenture) under the Indenture:

(a) "Denver Transit Partners Eagle P3 Project Debt Service Reserve Account" (the "Debt Service Reserve Account");

(b) "Denver Transit Partners Eagle P3 Project Debt Service Fund" (the "Debt Service Fund"), and within the Debt Service Fund, three accounts designated (i) the "Interest Account" (the "Interest Account"), (ii) the "Principal Account" (the "Principal Account") and (iii) the "Redemption Account" (the "Redemption Account"); and

(c) "Denver Transit Partners Eagle P3 Project Rebate Fund" (the "Rebate Fund"); and

(d) "Denver Transit Partners Eagle P3 Project Cost of Issuance Fund" (the "Cost of Issuance Fund"), and within the Cost of Issuance Fund, one account designated the "Series 2020 Cost of Issuance Account" (the "Series 2020 Cost of Issuance Account").

Notwithstanding anything in the Indenture to the contrary, the Trustee may from time to time establish and maintain additional funds, accounts or subaccounts necessary or useful in connection with any other provision of the Indenture or any Supplemental Indenture or to the extent deemed necessary by the Trustee.

# Cost of Issuance Fund

(a) There shall be deposited into the Series 2020 Cost of Issuance Account of the Cost of Issuance Fund an amount from the proceeds of the Series 2020B Bonds sufficient to pay the Costs of Issuance of the Series 2020A Bonds and the Series 2020B Bonds.

(b) Moneys in the Series 2020 Cost of Issuance Account of the Cost of Issuance Fund shall be used solely for the purposes set forth in the Indenture or to reimburse the Company or any affiliate of the Company for the Cost of Issuance of the Series 2020 Bonds actually paid by or on behalf of the Company and eligible for reimbursement, in any case upon receipt of an executed Funding Requisition, in substantially the form attached to the Indenture. Any funds remaining in the Series 2020 Cost of Issuance Account on the 90th day following the Closing Date will be transferred by the Trustee to the Revenue Account established pursuant to the Lockbox Account Agreement upon the written direction of the Company to the Trustee. Upon such transfer of funds remaining in the Series 2020 Cost of Issuance Account shall be closed.

# Debt Service Reserve Account

(a) The amount in the Debt Service Reserve Account on the Closing Date will be an amount at least sufficient to satisfy the Debt Service Reserve Requirement after the transfer from the Debt Service Reserve Account of amounts in excess of the Debt Service Reserve in connection with the Series 2010 Refinancing. After the Closing Date and to the extent available, funds will be deposited from the Revenue Account into the Debt Service Reserve Account to fund any shortfall in accordance with the Lockbox Account Agreement.

(b) Amounts in the Debt Service Reserve Account will be transferred to the Interest Account of the Debt Service Fund, or any applicable sub-account thereof, solely to pay the interest on the Bonds secured thereby, and to the Principal Account of the Debt Service Fund, or any applicable sub-account thereof, solely to pay the principal of the Bonds secured thereby, in the event there are insufficient funds available in such Accounts of the Debt Service Fund when such payments are due.

(c) To the extent on any date of determination amounts on deposit in the Debt Service Reserve Account are in excess of the Debt Service Reserve Requirement, such excess amounts will be transferred by the Trustee to the Revenue Account established pursuant to the Lockbox Account Agreement upon the written direction of the Company to the Trustee.

# Debt Service Reserve Letters of Credit; Debt Service Reserve Surety Policies

(a) Notwithstanding anything in the Indenture to the contrary, from time to time, the Company may, upon notice to the Trustee, substitute all or any portion of the cash or Permitted Investments on deposit in the Debt Service Reserve Account with an Acceptable Letter of Credit or an Acceptable Surety Policy in favor of the Trustee for purposes of the Debt Service Reserve Requirement; <u>provided</u>, however, that (i) any such substation will not cause any rating agency then rating any Bonds at the request of the Company to withdraw or lower its rating on such Bonds and (ii) if any proceeds of the Tax-exempt Bonds are on deposit in such Debt Service Reserve Account, an opinion of Bond Counsel that such substitution will not adversely affect the exclusion of the interest on such Bonds from gross income for federal income tax purposes shall be required.

(b) The Trustee shall make a drawing upon any such Acceptable Letter of Credit or Acceptable Surety Policy in an amount equal to the full remaining stated amount under such Acceptable Letter of Credit or Acceptable Surety Policy in the event that:

(i) the issuer of such Acceptable Letter of Credit fails to satisfy the requirements of an Acceptable LC Bank or the provider of such Acceptable Surety Policy fails to have an Acceptable Credit Rating and, within fifteen (15) Business Days of the date on which the Company has actual knowledge that the existing issuer ceased to be an Acceptable LC Bank or existing surety provider ceased to have an Acceptable Credit Rating, the Company fails to replace such Acceptable Letter of Credit or Acceptable Surety Policy, as the case may be, with any (or combination) of cash, another Acceptable Letter of Credit from an Acceptable LC Bank or another Acceptable Surety Policy from a surety provider with an Acceptable Credit Rating; or

(ii) such Acceptable Letter of Credit or Acceptable Surety Policy will expire within thirty (30) days and (A) the Trustee has received a notice from the issuer thereof that such Acceptable Letter of Credit or Acceptable Surety Policy will not be renewed in accordance with its terms and (B) the Company has failed to replace such Acceptable Letter of Credit or Acceptable Surety Policy with any (or a combination) of cash, another Acceptable Letter of Credit from an Acceptable LC Bank or another Acceptable Surety Policy from a surety with an Acceptable Credit Rating.

(c) The proceeds of any such drawing upon any such Acceptable Letter of Credit or Acceptable Surety Policy shall be deposited into the Debt Service Reserve Account pursuant to the terms of the Indenture.

(d) At the written request of a Company Representative, the Trustee shall release funds from the Debt Service Reserve Account in the event that the Company has delivered (or has caused to be delivered) to the Trustee an Acceptable Letter of Credit or Acceptable Surety Policy in a stated amount at least equal to the amount of funds to be released from the Debt Service Reserve Account; provided that, following such release, the amount on deposit in the Debt Service Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit and Acceptable Surety Policies) is at least equal to the Debt Service Reserve Requirement; provided, further, that (i) any such substitution will not cause any rating agency then rating any Bonds at the request of the Company to withdraw or lower its rating on such Bonds and (ii) if any proceeds of the Tax-exempt Bonds are on deposit in such Debt Service Reserve Account and will be released in connection with such substitution, an opinion of Bond Counsel that such release and the proposed use of such released proceeds will not adversely affect the exclusion of interest on such Bonds from gross income for federal income tax purposes shall be required. Any amounts so released shall be transferred directly (for the avoidance of doubt, without the delivery of a Revenue Account Transfer Certificate, transfer of such funds to the Revenue Account for application pursuant to the Lockbox Account Agreement or satisfaction of the Restricted Payment Conditions) to the Distribution Account, to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company in a written direction to the Trustee from a Company Representative on the date specified in such written direction. The Trustee shall credit any such additional Acceptable Letter of Credit or Acceptable Surety Policy to the Debt Service Reserve Account.

(c) The Trustee agrees that, in the event that, on any date of determination, the amount on deposit in the Debt Service Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit and Acceptable Surety Policy) exceeds the Debt Service Reserve Requirement and at the written instruction of the Company in accordance with the terms of the Financing Documents, accompanied by a certification of a Company Representative that the applicable reduction or termination is in accordance with the Indenture, the Trustee shall submit to the applicable bank a reduction certificate or termination notice with respect to any such Acceptable Letter of Credit or Acceptable Surety Policy, or surrender the original of any such Acceptable Letter of Credit or Acceptable Surety Policy for cancellation, and execute and deliver any related consents or notices required thereunder; provided that, following such reduction or termination, the amount on deposit in the Debt Service Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit and Acceptable Surety Policies) is at least equal to the Debt Service Reserve Requirement.

## **Debt Service Fund**

(a) There will be deposited into the appropriate account of the Debt Service Fund: (i) amounts remitted or transferred to such account from the Revenue Account pursuant to the Lockbox Account Agreement; (ii) any moneys paid to the Trustee pursuant to the Lockbox Account Agreement with respect to the Redemption Price of the Bonds; (iii) any amounts remitted or moneys transferred to such Account from the Debt Service Reserve Account pursuant to the Indenture; (iv) any moneys deposited into such account pursuant to an exercise of remedies under the Indenture and the Lockbox Account Agreement; and (v) all other moneys received by the Trustee that are accompanied by directions that such moneys are to be deposited into such account.

(b) To the extent that, on any applicable Debt Service Payment Date, there are insufficient funds on deposit in the Debt Service Fund to make the required payments of principal and interest on the Bonds, then the Trustee will transfer moneys between the Interest Accounts and the Principal Accounts with the following order of priority: first, to the Interest Accounts for each series of Bonds (on a *pro rata* basis) until such Accounts are sufficiently funded and second, to the Principal Accounts for each series of Bonds (on a *pro rata* basis) until such Accounts are sufficiently funded.

(c) Moneys in each account of the Debt Service Fund will be used solely for the payment (within each Account) of the principal of and interest on and the Redemption Price of the Bonds; provided, that (i) moneys paid by the Issuer for the redemption of the Bonds will be used to pay the Redemption Price of the Bonds and (ii) moneys held in such account of the Debt Service Fund following an acceleration of the Bonds upon an Event of Default will be used as provided in "Use of Moneys Received from Exercise of Remedies" below.

## Rebate Fund

The Rebate Fund will be for the sole benefit of the United States of America and will not be subject to the claim of any other Person, including without limitation, the Owners. The Rebate Fund is established for the purpose of complying with section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. There will be deposited into the Rebate Fund all amounts transferred to such Fund pursuant to the Lockbox Account Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture.

## Moneys to be Held in Trust

The Debt Service Fund and any other fund or account created under the Indenture (excluding the Rebate Fund, and any Defeasance Escrow Account) will be held by the Trustee, for the benefit of the Owners of the Bonds as specified in the Indenture. The Rebate Fund will be held by the Trustee for the purpose of making payments to the United States in accordance with the Federal tax laws. Any Defeasance Escrow Account will be held solely for the benefit of the Owners of the Bonds to be paid therefrom as provided in the agreement governing such Defeasance Escrow Account.

## **Investment of Moneys**

(a) All moneys held as part of any fund or account (other than the Debt Service Fund) will be deposited or invested and reinvested by the Trustee, at the written direction of the Company, in Permitted Investments; *provided*, however, that moneys in the Debt Service Fund will be invested solely in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof but no later than such funds are expected to be required to be expended; and *provided further*, however, that moneys in any Defeasance Escrow Account may only be invested in Defeasance Securities.

(b) Earnings from the investment of moneys held in any fund or account and losses or gains from the investment of moneys held in any fund or account will be charged against the fund or account in which they were realized.

(c) The Trustee will sell and reduce to cash a sufficient amount of the investments held in any fund or account whenever the cash balance therein is insufficient to make any payment to be made therefrom, and the Trustee will not be liable or responsible for any loss or tax resulting from such sale. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Company to provide timely written investment direction. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories.

(d) In the absence of written directions for investment, the moneys held pursuant to the Indenture shall be held uninvested in cash.

(e) The Company and Issuer each acknowledge that, to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grants the Company and/or the Issuer the right to receive brokerage confirmations or security transactions as they occur, at no additional cost, the Company and the Issuer each specifically waives receipt of such confirmations to the extent permitted by law.

(f) In determining market value of Permitted Investments, the Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

# **Trustee as Indenture Securities Intermediary**

(a) The Debt Service Reserve Account, any sub-account thereof, and any other account or sub-account created and established pursuant to Section 5.1 of the Indenture (the "Indenture Project Accounts") will be established and maintained under the Indenture as securities accounts with a securities intermediary (the "Indenture Securities Accounts") and pursuant to the Indenture, the Trustee and the Issuer agree that the Trustee will act as the securities intermediary (in such capacity, the "Indenture Securities Intermediary") under and for the purposes of the Indenture and for so long as it (or any successor thereto) is the Trustee.

(b) The Indenture Securities Intermediary agrees with the Trustee and the Issuer that each of the Indenture Securities Accounts will be an account to which financial assets may be credited and undertake to treat the Trustee as entitled to exercise the rights that comprise such financial assets. The Indenture Securities Intermediary agrees with the Trustee and the Issuer that each item of property credited to each Indenture Securities Account will be treated as a financial asset. Each of the Trustee and the Indenture Securities Intermediary will represent and warrant that it has not entered into any agreement or taken any other action that gives any Person other than the Trustee control over any of the Indenture Securities Intermediary agrees that it will not become a party to any agreement or take any action that gives any Person other than the Trustee control over any of the Indenture. The Indenture Securities Intermediary agrees that any financial assets credited to such Indenture Securities Accounts, or any "security entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, shall not be subject to any security interest, lien, encumbrance or right of setoff in favor of the Indenture Securities Intermediary or anyone claiming through the Indenture Securities Intermediary (other than the Trustee).

(c) It is the intent of the Trustee, the Issuer and the Company that the Trustee be the entitlement holder with respect to the Indenture Securities Accounts. In any event, the Indenture Securities Intermediary agrees that it will comply with entitlement orders with respect to the Indenture Securities Accounts originated by the Trustee without further consent by the Issuer, Company or any other Person. The Indenture Securities Intermediary will covenant that it will not agree with any Person other than the Trustee to comply with entitlement orders with respect to the Indenture Securities Accounts originated by any Person or entity other than the Trustee.

(d) The Indenture Securities Intermediary will not change the name or account number of any Indenture Securities Account without the prior written consent of the Trustee and at least five (5) Business Days' prior notice to the Trustee and the Company, and shall not change the entitlement holder. The Indenture Securities Intermediary will at all times act as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Indenture Securities

Accounts and will credit to each Indenture Securities Account each financial asset to be held in or credited to each Indenture Securities Account pursuant to the Indenture. To the extent, if any, that the Trustee is deemed to hold directly, as opposed to having a security entitlement in, any financial asset held by the Indenture Securities Intermediary for the Trustee, the Indenture Securities Intermediary will agree that it is holding such financial asset as the agent of the Trustee and will acknowledge and agree that it has received notification of the Secured Parties' security interest in such financial asset and that it is holding possession of such financial asset for the benefit of the Secured Parties.

(e) Each Indenture Securities Account will remain at all times with a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which must be rated "A" or better by S&P or "A2" or better by Moody's and that has a total capital stock and unimpaired surplus of not less than \$100,000,000. The Indenture Securities Intermediary will give notice to the Trustee and the Company of the location of the Indenture Securities Accounts and of any change thereof prior to the use or change thereof.

(f) Any income received by the Trustee with respect to the balance from time to time on deposit in each Indenture Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Indenture Securities Account, will be credited to the applicable Indenture Securities Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Indenture Securities Account together with any investments in overnight securities from time to time made pursuant to the Indenture will constitute part of the Project Collateral for the Bond Obligations pledged to the Trustee pursuant to the Security Agreement and will be held for the benefit of the Trustee, the other Secured Parties and the Company as their interests will appear under the Indenture and will not constitute payment of the Bond Obligations (or any other obligations to which such funds are provided under the Indenture to be applied) until applied thereto as provided in the Indenture.

(g) In the event that, notwithstanding the last sentence of subsection (b) above, the Indenture Securities Intermediary has or subsequently obtains by agreement, operation of law or otherwise a security interest in any of the Indenture Securities Accounts, or any financial asset credited thereto, or any "security entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Indenture Securities Intermediary will agree that such security interest will be subordinate to the security interest of the Trustee.

(h) The "securities intermediary's jurisdiction" of the Indenture Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) will be the State of New York.

(i) Terms used in this Section that are defined in the UCC shall have the meaning set forth in the UCC. Without limiting the foregoing, the term "securities intermediary" will, with respect to book-entry securities, have the meaning given to it under 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and bonds); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board); 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18 C.F.R. Part 1314 (book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association).

(j) To the extent that the Indenture Project Accounts are not considered "securities accounts" (within the meaning of Section 8-501(a) of the UCC), the Indenture Project Accounts will be deemed to be "deposit accounts" (as defined in Section 9-102(a)(29) of the UCC), which the Trustee will maintain with the Indenture Securities Intermediary acting not as a securities intermediary but as a "bank" (within the meaning of Section 9-102(a)(8) of the UCC). The Indenture Securities Intermediary will agree to comply with any and all instructions originated by the Trustee directing disposition of funds in the Indenture Project Accounts without any further consent of the Company or the Issuer.

#### Monthly Reports to Account Bank

To facilitate the administration of the funds and accounts under the Indenture and the related transfers between such funds and accounts and the accounts established and created pursuant to the Lockbox Account Agreement, the Trustee will agree to provide a monthly report to the Account Bank four Business Days prior to each Transfer Date setting forth, among other things, the balance for each fund and account, including any sub-accounts, established and created pursuant to the Indenture.

#### **Covenants of the Issuer**

The Issuer has made representations, warranties and covenants under the Indenture, including, but not limited to the following:

(a) The Issuer will not, except as specifically permitted pursuant to the Indenture or pursuant to any Security Document, pledge, grant, create or permit to exist in any manner any Security Interest on, or rights with respect to, the Trust Estate, except for a contract or agreement under which the financial obligations of the Issuer and the rights of any Person to require the Issuer to make any payment are (i) limited to (A) moneys in the funds and accounts that are to be used pursuant to such contract or agreement for the purposes for which moneys in such funds and accounts may be used pursuant to the Indenture or (B) moneys of the Issuer that are not part of the Trust Estate; and (ii) subordinate to the rights of the Owners of the Bonds under the Indenture.

(b) The Issuer will not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, the Trust Estate, the Project or any other funds or property of the Issuer, and it will not permit, to the extent of its control, any other Person to take any action or omit to take any action with respect to the Bonds, the Trust Estate, the Project or any other funds or property of the Issuer if such action or omission would cause interest on any of the Bonds to be included in gross income for federal income tax purposes. In furtherance of this covenant, the Issuer agrees to comply with the procedures set forth in the Federal Tax Certificate for the Bonds. The covenants set forth in this clause will remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all of the Issuer obligations in fulfilling such covenants have been met.

(c) The Issuer will not create, incur, assume or permit to exist any indebtedness of the Issuer with respect to the Trust Estate pledged under the Indenture, other than the Bonds, unless the Company requests the Issuer to issue Additional Parity Bonds pursuant to the Indenture.

## **Events of Default**

Any of the following will constitute an "Event of Default" under the Indenture with respect to all of the Outstanding Bonds:

(a) Default in the payment of any portion of the principal of any Outstanding Bond when due and payable;

(b) Default in the payment of any portion of interest on any Outstanding Bond when due and payable;

(c) Failure by the Issuer to cure any noncompliance with any other provision of the Indenture within 60 days after receiving written notice (with a copy to the Company) of such noncompliance from the Trustee with respect to the Bonds;

(d) A Loan Agreement Default will have occurred and be continuing; or

(e) The occurrence and continuance, with respect to the Issuer, of a Bankruptcy Event (provided that solely for purposes of this clause, all references to the "Company" within the definition of the term "Bankruptcy Event" will be substituted with the "Issuer").

## Remedies Following and During the Continuance of an Event of Default

(a) Upon the occurrence and during the continuance of an Event of Default, any Owner or the Issuer may deliver to the Trustee a written notice, with a copy to the Issuer and the Company that an Event of Default has occurred and is continuing. The Trustee will not be deemed to have any knowledge of the occurrence of an Event of Default, except with respect to an "event of default" described in clauses (a) or (b) of subsection "Events of Default", unless and until it has received such a notice from the relevant party.

(b) At any time during which an Event of Default has occurred and is continuing commencing on the date of delivery to the Trustee of the notice described in subsection (a) above (except with respect to an "event of default" described in subsections (a) or (b) of "Events of Default" in which no notice will be required), the Owners of not less than 25% in Bond Obligations will have the right to give the Trustee one or more enforcement directions directing the Trustee to take on behalf of the Owners of the Bonds whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners of the Bonds.

(c) Upon the occurrence and during the continuance of an Event of Default, if so instructed by the Owners of not less than 25% in Outstanding Bonds, the Trustee, subject to the immediately succeeding proviso, will declare all Outstanding Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Bonds to be due and payable, whereupon the same will become immediately due and payable without presentment, demand, protest or further notice of any kind; provided that the Outstanding Bonds may be accelerated pursuant to this clause (c) only to the extent the underlying Series 2020 Loan under the Loan Agreement will have been accelerated.

(d) The Owners of a majority in aggregate principal amount of the Outstanding Bonds may, by written notice to the Trustee, on behalf of all of the Owners, rescind any acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Company has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

(e) All rights, actions and claims under the Indenture may be prosecuted and enforced by the Trustee on behalf of the Owners of the Bonds. In the case of pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization or other similar judicial proceeding relative to the Issuer or the Trust Estate, the Trustee, subject to the Lockbox Account Agreement, will be entitled to file and prove a claim for the amount of the Issuer's and the Company's obligations to the Owners of the Bonds owing and unpaid and to file such other papers or documents as may be necessary in order to have the claims of the Owners allowed in such judicial proceeding and, to the extent permitted by Law, to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same in accordance with the terms of the Indenture and the Lockbox Account Agreement.

(f) Notwithstanding anything contained in the Indenture or in the other Financing Documents to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Trustee to liability under any applicable environmental laws, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Trustee will not be required to take any foreclosure action if the approval of a government regulator shall be a condition precedent to taking such action, and such approval cannot be obtained.

# Use of Moneys Received from Exercise of Remedies

After an acceleration pursuant to clause (c) of "Remedies Following and During the Continuance of an Event of Default" directly above, moneys received by the Trustee under the Indenture and from the Account Bank under the other Security Documents in respect of the Issuer's obligations under the Indenture will be applied first to pay the reasonable and proper fees and expenses (including the reasonable fees and expenses of counsel) of the Trustee incurred in connection with the exercise of remedies following such Event of Default, and thereafter remaining amounts will be applied promptly by the Trustee as follows:

<u>First</u>, ratably, to the payment of fees, rating agency costs, administrative costs, expenses and indemnification payments due to the Trustee or the Reserved Rights of the Issuer under the Financing Documents and to the payments then due and payable by the Company to the Rebate Fund;

Second, ratably, to all accrued and unpaid interest on the Bonds;

Third, ratably, to the outstanding principal amount on the Bonds;

Fourth, to all accrued and unpaid interest on any Permitted Subordinated Debt;

Fifth, to the outstanding principal amount on any Permitted Subordinated Debt; and

<u>Sixth</u>, to the Company, upon termination, expiration or payment in full of all commitments, any surplus to be applied at the Company's discretion.

## Limitations on Rights of Owners Acting Individually

Subject to the Lockbox Account Agreement, no Owner will have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any remedy under the Indenture or for the enforcement of the terms of the Indenture, unless an Event of Default under the Indenture has occurred and is continuing and the Owner has made a written request to the Trustee, and has given the Trustee 60 days, to take such action in its capacity as Trustee. Nothing in this section will affect or impair the right of the Owner to enforce the payment of the principal of and interest on or Redemption Price of any Bond at and after the date such payment is due, subject, however, to the limitations on remedies set forth in the Indenture. In addition, any action by any Owner taken with respect to the Trust Estate will only be taken in accordance with the provisions of the Indenture, described above under subsection "Remedies Following and During the Continuance of an Event of Default."

## Waivers of Events of Default

The Trustee, notwithstanding anything else to the contrary contained in the Indenture, will waive any Event of Default upon the written direction of Owners of not less than 25% of the Outstanding Bonds; provided, however, that any Event of Default in the payment of the principal of or interest on, or the Redemption Price of, any Bond when due will not be waived (except as contemplated in subsection (d) of "Remedies Following and During the Continuance of an Event of Default" above) without the consent of the Owners of 100% of the Outstanding Bonds represented by the Bonds, unless, prior to such waiver, all such amounts (with interest on amounts past due on any Bond at the interest rate on such Bond) and all expenses of the Trustee in connection with such Event of Default have been paid or provided for. In case of any such waiver, then and in every such case the Issuer, the Trustee and the Owners will be restored to their former positions and rights under the Indenture, but no such waiver will extend to any subsequent or other Event of Default, or impair any right consequent thereon.

## **Resignation or Replacement of Trustee**

(a) The present or any future Trustee may resign by giving written notice to the Issuer (with a copy to the Company) not less than 60 days before such resignation is to take effect. Such resignation will take effect only upon the appointment of and acceptance by a successor qualified as provided in clause (c) below. If no successor is appointed within 60 days following the date designated in the notice for the Trustee's resignation to take effect, the resigning Trustee may petition a court of competent jurisdiction (at the Company's expense) for the appointment of a successor. The present or any future Trustee may be removed at any time with 30 days' notice by the Issuer in the event the Issuer reasonably determines that the Trustee is not duly performing its obligations under the Indenture or that such removal is in the best interests of the Issuer or the Owners.

(b) In case the present or any future Trustee will at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Issuer, with the written consent of the Company, provided that no Event of Default has occurred and is continuing under the Loan Agreement (such consent not to be unreasonably withheld, delayed or conditioned). Upon making any such appointment, the Issuer will forthwith give or cause to be given notice thereof to each Owner, which notice may be given concurrently with the notice of resignation given by any resigning Trustee.

(c) Every successor Trustee will be a bank or trust company in good standing, qualified to do business in the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act under the Indenture and having a capital and surplus of not less than \$100,000,000. Any successor Trustee appointed under the Indenture will execute, acknowledge and deliver to the Issuer (with a copy to the Company) an instrument accepting such appointment under the Indenture, and thereupon such successor will, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor as further provided in the Indenture.

# Supplemental Indentures Not Requiring Consent of Owners

The Issuer and the Trustee may, without the consent of, or notice to, the Owners, but with the written consent of the Company, enter into a Supplemental Indenture for any one or more or all of the following purposes:

(a) to provide for the issuance by the Issuer of the Additional Parity Bonds in accordance with "Additional Parity Bonds" below;

- (b) to add additional covenants to the covenants and agreements of the Issuer set forth in the Indenture;
- (c) to add additional revenues, properties or collateral to the Trust Estate;

(d) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in the Indenture;

(e) to amend any existing provision in the Indenture or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Series 2020A Bonds or any other Tax-exempt series of Bonds for exclusion from gross income for federal income tax purposes; (ii) to qualify, or to preserve the qualification of, the Indenture or any Supplemental Indenture under the Federal Trust Indenture Act of 1939; or (iii) to qualify, or preserve the qualification of, any Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;

(f) to amend any provision in the Indenture relating to the Rebate Fund if, in the opinion of Bond Counsel, such amendment does not adversely affect the exclusion of interest on the Series 2020A Bonds or any other Tax-exempt series of Bonds from gross income for federal income tax purposes;

- (g) to provide for or eliminate book-entry registration of any of the Bonds;
- (h) to obtain or maintain a rating of the Bonds by a Nationally Recognized Rating Agency;
- (i) to facilitate the receipt of moneys;

(j) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or

(k) in connection with any other change which, in the judgment of the Trustee (who may for such purposes rely entirely upon a certificate of the Company with respect thereto or a legal opinion with respect thereto of counsel selected by the Trustee, which legal counsel may rely on a certificate of an investment banker or financial advisor with respect to financial matters), does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Indenture to the terms and provisions of the Concession Agreement.

## **Supplemental Indentures Requiring Consent of Owners**

The Issuer and the Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying the rights of the Owners in any way under the Indenture (other than as contemplated in subsection "Supplemental Indentures not Requiring Consent of Owners" above) with the written consent of the Owners of a majority in the aggregate principal amount of the then Outstanding Bonds of any series of Bonds affected by the proposed amendment and with the written consent of the Company; <u>provided</u>, <u>further</u>, that no Supplemental Indenture modifying the Indenture in the way described below may be entered into without the written consent of the Owner of each Bond affected thereby:

(a) a reduction of the interest rate, principal of or interest on or Redemption Price payable on any Bond, a change in the maturity date of any Bond, a change in any Interest Payment Date for any Bond or a change in the redemption provisions applicable to any Bond;

(b) the deprivation of an Owner of the Security Interest on the Trust Estate granted by the Indenture;

(c) the creation of a priority right in the Trust Estate of another Bond over the right of the affected Bond, except as permitted under the Indenture; or

(d) a reduction in the percentage of the aggregate Bond Obligations required for consent to any Supplemental Indenture or the parties whose consent is required.

## **Conditions to Effectiveness of Supplemental Indentures**

(a) No Supplemental Indenture will be effective until (i) it has been executed by the Issuer and the Trustee and, when applicable, the Company and (ii) Bond Counsel has delivered a written opinion to the effect the Supplemental Indenture complies with the provisions of the Indenture and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any series of Outstanding Bonds where the interest on such Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Bonds.

(b) No Supplemental Indenture entered into pursuant to subsection "Supplemental Indentures Requiring Consent of Owners" above will be effective until, in addition to the conditions set forth in clause (a) of this section, (i) a notice has been mailed to each Owner, which notice describes the nature of the proposed Supplemental Indenture and states that copies of it are on file at the office of the Trustee for inspection by the Owners and (ii) subject to the provisions of any Supplemental Indenture, Owners of the required percentage of the Bond Obligations have consented to the Supplemental Indenture.

(c) Anything in the Indenture to the contrary notwithstanding, if an Owner does not respond (in any way) to a request with respect to any Supplemental Indenture requiring consent of a majority of the Owners, but not requiring consent from greater than a majority of Owners, pursuant to "Supplemental Indentures Requiring Consent of Owners" above, within twenty (20) Business Days of delivery of such request, then any Bonds owing to such Owner will not be counted for the purpose of calculating the consent of a majority of Owners. For the avoidance of doubt, this provision of the Indenture will not apply to clauses (a)–(d) of subsection "Supplemental Indentures Requiring Consent of Owners" above.

## **Consent of the Company**

Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture pursuant to the terms of the Indenture will not become effective unless and until the Company will have consented to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee will cause notice of the proposed execution of any such Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least fifteen (15) Business Days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

## Amendments to Loan Agreement and the Security Documents Not Requiring Consent of Owners

The Issuer may (i) upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Series 2020A Bonds or any other Tax-exempt series of Bonds from gross income for federal income tax purposes and is authorized by the Indenture and (ii) upon the receipt of the written consent of the Company, consent to any amendment, change or modification of the Loan Agreement or any Security Document, without the consent of, or notice to, the Owners, for any one or more or all of the following purposes:

(a) to add additional covenants to the covenants and agreements of the Company set forth in the Loan Agreement;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in the Loan Agreement;

(c) to amend any existing provision in the Loan Agreement or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Series 2020A Bonds or any other Tax-exempt series of Bonds for exclusion from gross income for federal income tax purposes or (ii) to qualify, or preserve the qualification of, any Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;

(d) to facilitate the receipt of moneys;

(e) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or

(f) in connection with any other change which, in the judgment of the Trustee (who may for such purposes rely entirely upon a certificate of the Company with respect thereto or a legal opinion with respect thereto of counsel selected by the Trustee, which legal counsel may rely on a certificate of an investment banker or financial advisor with respect to financial matters), does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Loan Agreement to the terms and provisions of the Concession Agreement.

# Amendments to Loan Agreement and the Security Documents Requiring Consent of Owners

Except for the amendments, changes or modifications as provided in the Indenture, the Issuer may consent to any other amendment, change or modification of the Loan Agreement or any Security Document with the prior written consent of the Owners of a majority in the aggregate principal amount of the then Outstanding Bonds and with the written consent of the Company; <u>provided</u>, <u>further</u>, that no amendment, change or modification of the Loan Agreement or any Security Document may be entered into in respect of the matters contemplated below unless the prior written consent of the Owner of each Bond affected thereby and the Company has been obtained:

(a) a reduction of the interest rate, principal of or interest on the Series 2020 Loan, a change in the maturity date of the Series 2020 Loan, a change in the Interest Payment Date for the Series 2020 Loan or a change in the prepayment provisions applicable to the Series 2020 Loan; or

(b) the deprivation of the Trustee of the Security Interest granted by the Security Documents.

The Trustee will, upon notice of the same from the Issuer and upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in the Indenture with respect to Supplemental Indentures; *provided*, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such amendment, change or modification complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Series 2020A Bonds or any other Tax-exempt series of Bonds from gross income for federal income tax purposes. Such notice will briefly set forth the nature of such proposed amendment, change or

modification and will state that copies of the instrument embodying the same are on file at the Designated Payment Office of the Trustee for inspection by all Owners.

## Additional Parity Bonds Issuer Loan Agreement

In the event that the Loan Agreement is amended pursuant to the Indenture prior to execution of the Additional Parity Bonds Issuer Loan Agreement (if any), the form of Additional Parity Bonds Issuer Loan Agreement attached to the Indenture will be deemed to reflect such changes *mutatis mutandis*.

# Actions of Trustee Requiring Owner Consent Pursuant to the Series 2020 Issuer Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement

In the event that the Series 2020 Issuer Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement (if executed) requires certain actions by the Trustee at the direction of a designated portion of the Owners of the applicable Bonds, the Trustee hereby agrees as follows:

(a) if the Company requests consent of the Trustee to be provided at the direction of a designated portion of the Owners of the applicable Bonds, the Trustee shall, upon notice of the same from the Company and upon being satisfactorily indemnified with respect to expenses, cause notice of such requested consent or action to be given in the same manner as provided by Section 9.3 of the Indenture with respect to Supplemental Indentures; provided, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Tax-exempt Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such requested consent or action and shall state that any copies of such request from the Company are on file at the Designated Payment Office of the Trustee for inspection by all Owners; and

(b) upon direction from Owners of not less than the required percentage in aggregate Outstanding Bonds, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, take any such directed action in accordance with the Series 2020 Issuer Loan Agreement or any Additional Parity Bonds Issuer Loan Agreement (if executed); *provided*, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

# **Discharge of Indenture**

If 100% of the principal of and interest on and Redemption Price due, or to become due, on all the Bonds, the fees and expenses due to the Trustee and Issuer if any and all other amounts payable under the Indenture have been paid, or provision will have been made for the payment thereof in accordance with "Defeasance of Bonds" below and the opinion of Bond Counsel required by "Opinion of Bond Counsel" below has been delivered, then, (a) the right, title and interest of the Trustee in and to the Trust Estate will terminate and be discharged (referred to herein as the "discharge" of the Indenture); (b) the Trustee will transfer and convey to or to the order of the Issuer all property that was part of the Trust Estate, including but not limited to any moneys held in any Fund or Account under the Indenture, except any Defeasance Escrow Account created pursuant to "Defeasance of Bonds" below (which Defeasance Escrow Account will continue to be held in accordance with the agreement governing the administration thereof and, and consistent with the Indenture, subject to any applicable abandoned property law, the Trustee will pay to the Company upon request any money held by it for the payment of principal of or interest on Redemption Price that remains unclaimed for three years, and, thereafter, Owners entitled to the money must look to the Company for payment); and (c) the Trustee will execute any instrument requested by the Issuer to evidence such discharge, transfer and conveyance.

# **Defeasance of Bonds**

(a) All or any portion of the Outstanding Bonds will be deemed to have been paid (referred to herein as "defeased") prior to their maturity or redemption if:

(i) the defeased Bonds are to be redeemed prior to their maturity, the Issuer has irrevocably instructed the Trustee to give notice of redemption of such Bonds in accordance with the Indenture;

(ii) there has been deposited in trust in a Defeasance Escrow Account either moneys in an amount which will be sufficient, or Defeasance Securities, to pay the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited into or held in the Defeasance Escrow Account, will be sufficient to pay when due the principal of and interest on or Redemption Price, as applicable, due and to become due on the defeased Bonds on and prior to the redemption date or maturity date thereof, as the case may be;

(iii) a verification agent, acceptable to the Issuer has delivered a verification report verifying the deposit described in paragraph (ii) of this subsection; and

(iv) the opinion of Bond Counsel required by "Opinion of Bond Counsel" below has been delivered.

(b) The Defeasance Securities and moneys deposited in a Defeasance Escrow Account pursuant to this section and the principal and interest payments on such Defeasance Securities will not be withdrawn or used for any purpose other than, and will be held in trust solely for, the payment of the principal of and interest on and Redemption Price of the defeased Bonds; *provided*, however, that (i) any moneys received from principal and interest payments on such Defeasance Securities that are not required to pay the principal of and interest on or Redemption Price of the defeased Bonds on the date of receipt will, to the extent practicable, be reinvested in Defeasance Securities maturing at the times and in amounts sufficient to pay when due the principal of and interest on and Redemption Price to become due on the defeased Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (ii) any moneys or Defeasance Securities that are on deposit in the Defeasance Escrow Account if (A) the moneys and Defeasance Securities that are substituted for the moneys or Defeasance Securities that are substituted for the moneys or Defeasance Securities that are withdrawn from the Defeasance Escrow Account, satisfy the conditions stated in subsection (a)(ii) of this section and (B) a verification report and Bond Counsel opinion are delivered that comply with subsections (a)(iii) and (a)(iv) of this section.

(c) Any Bonds that are defeased as provided in the "Defeasance of Bonds" section will no longer be secured by or entitled to any right, title or interest in or to the Trust Estate, and the principal of and interest on and Redemption Price thereof will be paid solely from the Defeasance Securities and money held in the Defeasance Escrow Account.

## **Opinion of Bond Counsel**

Prior to any discharge of the Indenture pursuant to subsection "Discharge of Indenture" or the defeasance of any Bonds pursuant to subsection "Defeasance of Bonds" above, Bond Counsel must have delivered a written opinion to the effect that all requirements of the Indenture for such discharge or defeasance have been complied with and that such discharge or defeasance will not adversely affect the status of interest for federal income tax purposes on any series of Tax-exempt Bonds where the interest on such Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Bonds.

## **Additional Parity Bonds**

Subject to the restrictions set forth in the Indenture and upon request by the Company, the Issuer may issue Additional Parity Bonds, which will be ratably and equally secured by the Trust Estate, upon execution of a Supplemental Indenture without consent of the Owners of the Bonds pursuant to the Indenture. Except to the extent inconsistent with the express terms of the Additional Parity Bonds issued and the related Supplemental Indenture executed pursuant to the Indenture, all of the provisions, terms, covenants and conditions of the Indenture will be applicable to any Additional Parity Bonds issued under the Indenture.

## Additional Parity Bonds

(a) Subject to the requirements set forth in this subsection (a) and subject to subsection (b) hereof, the Issuer may issue Additional Parity Bonds in accordance with the Indenture, the proceeds of which will be used (i) in connection with the Project, including to fund the obligations of the Company under Section 38.9 or Section 36.4 of the Concession Agreement or (ii) to refinance or refund all or any portion of Bonds then Outstanding.

(i) Such Additional Parity Bonds may be issued solely if prior to the issuance of any such Additional Parity Bonds, the Company delivers to the Trustee the following:

(A) A certificate of the Company, signed by a Company Representative, dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Potential Event of Default or Event of Default has occurred and is continuing or will result from the issuance of such Additional Parity Bonds;

(B) Executed counterparts of all financing documents related to the Additional Parity Bonds including, without limitation, (x) a certified copy of the executed counterpart of the Additional Parity Bonds Issuer Loan Agreement, under which the Issuer agrees to loan the proceeds of the Additional Parity Bonds to the Company, and (y) an original executed counterpart of the Supplemental Indenture under which the Additional Parity Bonds have been issued;

(C) A certificate of an Independent Consultant dated as of the date of issuance of such proposed Additional Parity Bonds certifying that the Indebtedness under the Additional Parity Bonds will not result in a Minimum Projected Debt Service Coverage Ratio of less than 1.15:1.00;

(D) Evidence that upon the date of issuance of such Additional Parity Bonds the then current ratings on any then Outstanding Bonds issued pursuant to the Indenture will not be lowered below investment grade on the date of such issuance as a result of the issuance of such Additional Parity Bonds; and

(E) A certificate of an Independent Consultant dated as of the date of issuance of such proposed Additional Parity Bonds certifying that in every Fiscal Year after December 31, 2020 until the maturity date thereof, the ratio of the TABOR Portion to the annual debt service payable on all Outstanding Bonds after the issuance of such Additional Parity Bonds will be at least 1.00:1.00.

(b) Notwithstanding anything in this Section to the contrary, in the case of Additional Parity Bonds issued for the purpose of refinancing or refunding any portion of the Bonds then Outstanding, compliance with subsection (a)(i) herein will not be required (unless otherwise required by the provisions of any applicable resolution or Supplemental Indenture authorizing the issuance of Additional Parity Bonds) so long as the debt service payable on all Bonds Outstanding after the issuance of such Additional Parity Bonds in each Bond Year does not exceed the debt service payable on all Bonds Outstanding prior to the issuance of such Additional Parity Bonds in each Bond Year.

## **Applicable Law**

The laws of the State will be applied in the interpretation, execution and enforcement of the Indenture.

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## APPENDIX H

## SUMMARY OF CERTAIN PROVISIONS OF THE LOCKBOX ACCOUNT AGREEMENT

The following is a summary of selected provisions of the Lockbox Account Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement.

## The Account Bank

## **Duties and Responsibilities**

(a) Pursuant to the Lockbox Account Agreement, the Company will appoint The Bank of New York Mellon Trust Company, N.A. as the Account Bank and the Securities Intermediary and the Account Bank will administer the Lockbox Project Accounts and enforce the Lockbox Account Agreement. In most instances, the Account Bank will only be required to act or refrain from acting upon the written instructions of the Trustee or the Company; however, the written instructions of the Trustee or the Company will be required where expressly provided in the Lockbox Account Agreement.

(b) In no event will the Account Bank be required to foreclose on, or take possession of, the Lockbox Account Collateral, if, in its reasonable judgment, such action would be in violation of any applicable law, rule or regulation pertaining thereto, or if the Account Bank reasonably believes that such action would result in the incurrence of liability by the Account Bank for which it is not fully indemnified by the Company pursuant to the terms of the Lockbox Account Agreement.

The Account Bank will not be responsible to the Trustee for (i) any recitals, statements, (c) representations or warranties by the Company or any of the Secured Parties (other than its own) contained in the Lockbox Account Agreement or the other Financing Documents, or any certificate or other document delivered by the Company or the Trustee thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the Account Bank with respect to such documents to which the Account Bank is a party) or sufficiency of the Lockbox Account Agreement or any other document referred to or provided for therein or of the Lockbox Account Collateral held by the Account Bank under the Lockbox Account Agreement, (iii) the performance or observance by the Company or the Trustee (other than as to itself) of any of their respective agreements contained therein, nor will the Account Bank be liable because of the invalidity or unenforceability of any provisions of the Lockbox Account Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Security Interests on any of the Lockbox Account Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Account Bank), the validity of the title of the Company to the Lockbox Account Collateral, insuring the Lockbox Account Collateral or the payment of Taxes, charges or assessments on the Lockbox Account Collateral or otherwise as to the maintenance of the Lockbox Account Collateral.

## Limitation of Liability

Neither the Account Bank nor any of its directors, officers, employees or agents will be liable or responsible for any action taken or omitted to be taken by it or them under the Lockbox Account Agreement, except for its or their own gross negligence, bad faith or willful misconduct.

## Administrative Actions

The Account Bank may, but is not obligated to, take action it deems necessary to perfect or continue the perfection of the Security Interests on the Lockbox Account Collateral held for the benefit of the Secured Parties. The Account Bank will not release any of the Lockbox Account Collateral held for the benefit of the Secured Parties, except: (a) upon the written direction of the Trustee (acting in accordance with the terms of the Indenture); (b) upon payment in full of the Bond Obligations; (c) for Lockbox Account Collateral consisting of a debt instrument if the

Indebtedness evidenced thereby has been paid in full; or (d) where such release is expressly permitted under the Lockbox Account Agreement.

## **Reliance of Account Bank**

In connection with the performance of its duties under the Lockbox Account Agreement, the Account Bank will be entitled to rely conclusively upon, and will be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication (including any thereof by facsimile or electronic communication) of the Trustee (including, but not limited to, instructions requested by the Account Bank under the Lockbox Account Agreement or the other Financing Documents), which the Account Bank in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper person or persons, and it will be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Account Bank will not have any responsibility to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction or other communication furnished to it. Whenever the Lockbox Account Agreement specifies that any instruction or consent by the Trustee is to be given, the Account Bank will be entitled to rely upon any such instruction or consent by the Trustee, and the Account Bank may presume without investigation that any such instruction or consent by the Trustee has been given in accordance with the terms of the Indenture.

#### Resignation and Removal; Successor Account Bank; Individual Account Bank

Subject to the appointment and acceptance of a successor Account Bank, the Account Bank may resign at any time by giving at least thirty (30) days' prior written notice to the Trustee and the Company, and the Account Bank may be removed at any time, with or without cause. by the Trustee upon thirty (30) days' written notice thereof to the Account Bank, the Trustee and the Company. Upon any such resignation or removal, the Trustee will have the right to appoint a successor Account Bank which, so long as no Event of Default under the Financing Documents has occurred and is continuing, must be reasonably acceptable to the Company. If no successor Account Bank will have been so appointed by the Trustee within 30 days after the retiring Account Bank's giving of notice of resignation or the removal of the retiring Account Bank by the Trustee, then the retiring Account Bank may apply to a court of competent jurisdiction (with notice to the Trustee and the Company) for the appointment of a successor Account Bank. In all such cases, the successor Account Bank must (i) be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Lockbox Account Collateral in accordance with the terms of the Lockbox Account Agreement and the unsecured long-term debt of which will be rated "A" or better by S&P or "A1" or better by Moody's, (ii) will have a total capital stock and unimpaired surplus of not less than \$100,000,000 and, so long as no Event of Default under the Financing Documents has occurred and is continuing, must be reasonably acceptable to the Company and (iii) will assume all rights and obligations of the Account Bank as depositary under any deposit agreement, such assumption to be deemed to have occurred automatically without any further action by any party under such agreement upon the assumption of the Account Bank's rights and obligations by the successor Account Bank under the Lockbox Account Agreement. A Co-Account Bank appointed pursuant to the Lockbox Account Agreement will not be required to meet the conditions of eligibility above if such Co-Account Bank holds only an insubstantial amount of the Lockbox Account Collateral, as reasonably determined by the Trustee.

#### Books and Records; Reports

(a) The Account Bank will at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries will be made of all transactions relating to the Bond Obligations, Project Revenues and all Lockbox Project Accounts established pursuant to the Lockbox Account Agreement. Such books of record and accounts will be available for inspection by the Trustee, the Issuer and the Company, or their authorized agents or representatives, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) Four (4) Business Days prior to each Transfer Date, the Account Bank will furnish to the Trustee, the Issuer and the Company a report that sets forth in reasonable detail the account balances, disbursements, transfers, investment transactions and accruals for each of the Lockbox Project Accounts during the prior month.

(c) Within ninety (90) days after the end of each year, the Account Bank will furnish to the Trustee, the Issuer and the Company a report setting forth the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Lockbox Project Accounts (other than the Operating Account) during the preceding year.

(d) The Account Bank will maintain records of all receipts, disbursements and investments of funds with respect to the Lockbox Project Accounts until the fifth anniversary of the date on which all of the Bond Obligations have been paid in full.

## Account Bank's Claims Against Lockbox Project Accounts

The Account Bank will agree not to exercise or claim any right of offset, banker's lien or other like right against the Lockbox Project Accounts for so long as the Lockbox Account Agreement is in effect except with respect to (a) returned or charged-back items, reversals or cancellations of payment orders and other electronic fund transfers or other corrections or adjustments to the Lockbox Project Account or transactions therein, (b) overdrafts in the Lockbox Project Accounts or (c) the Account Bank's charges, fees and expenses with respect to the Lockbox Project Accounts or the services provided under the Lockbox Account Agreement. In the event that the Account Bank has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Lockbox Project Accounts or any funds credited thereto, the Account Bank will agree that such security interest will be subordinate to the security interest of the Secured Parties.

#### **Company Remains Liable**

Notwithstanding anything in the Lockbox Account Agreement to the contrary, (a) the Company will remain liable under its contracts and agreements (including the Financing Documents) to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if the Lockbox Account Agreement had not been executed, (b) the exercise by the Account Bank of any of the rights under the Lockbox Account Agreement will not release the Company from any of its duties or obligations under such contracts and agreements, and (c) neither the Account Bank nor the Trustee will have any obligation or liability under the contracts and agreements of the Company by reason of the Lockbox Account Agreement, nor will the Account Bank be obligated to perform any of the obligations or duties of the Company under such contracts or agreements or to take any action to collect or enforce any claim for payment assigned thereunder. Notwithstanding the foregoing, if the Company fails to perform any agreement of the Company contained in the Lockbox Account Agreement relating to the perfection or preservation of the Lockbox Account Collateral, the Account Bank may (but will not be obligated to) itself perform, or cause performance of, such agreement, and the expenses of the Account Bank incurred in connection therewith will be payable by the Company pursuant to the Lockbox Account Agreement.

#### **The Lockbox Project Accounts**

#### **Establishment of Lockbox Project Accounts**

(a) The following Lockbox Project Accounts will be established and created (or in the case of clause (i)(C), were established and created pursuant to the Original Lockbox Account Agreement and in the case of clause (iii), was established and created another financial institution in accordance with "—Operating Account" below) in the name of the Company and under the exclusive control of the Account Bank (the Lockbox Project Accounts set forth in clauses (i) through (v) collectively, the "Securities Accounts"):

(i) the Revenue Account, which consists of (A) the Series 2020 Interest Sub-Accounts, (B) the Series 2020 Principal Sub-Accounts and (C) the Series 2010 Interest Sub-Account and the Series 2010 Principal Sub-Account;

- (ii) the Renewal Works Reserve Account;
- (iii) the Operating Account;

- (iv) the Distribution Account; and
- (v) the Borrower Change In Law Contingency Account.

(b) Upon the issuance of any Additional Parity Bonds, the Account Bank is authorized and instructed pursuant to the Lockbox Account Agreement to establish within the Revenue Account an interest sub-account and a principal sub-account, each subject to the Lockbox Account Agreement, for each series of Additional Parity Bonds issued (each such interest sub-account and the Series 2020 Interest Sub-Accounts, an "Applicable Interest Sub-Account" and each such principal sub-account and the Series 2020 Principal Sub-Accounts, an "Applicable Principal Sub-Account"). The Account Bank may establish and maintain additional sub-accounts within any of the Lockbox Project Accounts upon the written instruction of the Company. In such written instruction, the Company will expressly provide for the purposes and the term of any such sub-accounts and for any deposits and withdrawals in those circumstances.

(c) Except as expressly provided in the Lockbox Account Agreement, all of the Lockbox Project Accounts will be under the control of the Account Bank and the Company will not have any right to withdraw funds from any Lockbox Project Account. The Company will irrevocably authorize the Account Bank to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Lockbox Project Account in accordance with the terms of the Lockbox Account Agreement.

## **Revenue** Account

(a) Except as otherwise provided in the Lockbox Account Agreement, all Project Revenues received by the Company with respect to the Project, and any Applicable Termination Amount received by the Company at any time (subject to APPENDIX G—"SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Use of Moneys Received from Exercise of Remedies" and the sections "Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default" and "Termination Proceeds" herein) will be deposited into the Revenue Account. The Company will promptly deposit or cause to be deposited into the Revenue Account all other amounts received by the Company from any source whatsoever, except as otherwise specified in the Lockbox Account Agreement. Pending such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

(b) Pursuant to, and subject to the limitations set forth in subsection (c) below, the Account Bank will transfer all amounts deposited into the Revenue Account pursuant to subsection (a) above each month on the Transfer Date as follows and in accordance with the Revenue Account Transfer Certificate delivered by the Company to the Account Bank (with a copy to the Trustee):

<u>First</u>, to the payment of fees, administrative costs and expenses due to the Trustee and the Account Bank under the Financing Documents, to the payment of Reserved Rights to the Issuer, and to the payment of rating agency costs and to the payment of general overhead and other costs incurred by the Company in the ordinary course of business (but not including O&M Expenditures);

<u>Second</u>, to any payments then due and payable by the Company to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt Additional Parity Bonds;

Third, to the payment of Project Costs;

<u>Fourth</u>, to the Operating Account, an amount equal, together with amounts then on deposit therein, to the projected O&M Expenditures for one (1) month following the date of such transfer, provided that for any fiscal quarter such amount does not exceed 110% of the budgeted amount of O&M Expenditures for such fiscal quarter;

<u>Fifth</u>, to each Applicable Interest Sub-Account of the Revenue Account, (i) with respect to any Interest Payments on Outstanding Bonds that have an Interest Period of one month or less, the amount due on the next Interest Payment Date and any amount to become due before the next succeeding Transfer Date, taking

into account amounts then on deposit in the Applicable Interest Sub-Account of the Revenue Account, and (ii) with respect to Interest Payments on Outstanding Bonds that have Interest Periods greater than one month, an amount equal to the Interest Payments due on the next Interest Payment Date divided by the number of months in such Interest Period; *provided*, *however*, the monthly deposit on the Transfer Date immediately before an Interest Payment Date shall equal the amount required, together with the amount then on deposit in the Applicable Interest Sub-Account of the Revenue Account, to pay the Interest Payment due on such Interest Payment Date; and *provided further*, *however*, that if the amount available on the applicable Transfer Date is not sufficient to make all of the deposits required by clauses (i) and (ii), such deposits shall be made pro rata, in the amounts obtained by multiplying the amount available for transfer on such Transfer Date by the fraction obtained by dividing (1) the amount scheduled to be deposited in accordance with clause (i) or (ii) in each Applicable Interest Sub-Account of the Revenue Account on such Transfer Date, as applicable, by (2) the total amount scheduled to be deposited to all of the Applicable Interest Sub-Accounts of the Revenue Account on such Transfer Date;

Sixth, to each Applicable Principal Sub-Account of the Revenue Account, Principal Payments for Outstanding Bonds of each series, starting on the Transfer Date that is six months before the first Principal Payment Date for the Bonds of such series and on each Transfer Date falling on or before each Principal Payment Date, an amount equal to 1/6th of the amount of the Principal Payments due on such Principal Payment Date; *provided, however*, that the deposit on the Transfer Date occurring immediately before a Principal Payment Date shall equal the amount required, taking into account the amount then on deposit in the Applicable Principal Sub-Account, to pay the Principal Payment due on such Principal Payment Date; *provided, however*, that if the amount available on the applicable Transfer Date is not sufficient to make all of the deposits required to be made on a Transfer Date, such deposits shall be made pro rata, in the amounts obtained by multiplying the amount available for transfer on such Transfer Date by the fraction obtained by dividing (A) the amount scheduled to be deposited in each Applicable Principal Sub-Account of the Revenue Account on such Transfer Date to pay principal on the Bonds , by (B) the total amount scheduled to be deposited to all of the Applicable Principal Sub-Accounts of the Revenue Account on such Transfer Date to pay principal on the Bonds , by (B) the total amount scheduled to be deposited to all of the Applicable Principal Sub-Accounts of the Revenue Account on such Transfer Date to pay principal on the Bonds , by (B) the total amount scheduled to be deposited to all of the Applicable Principal Sub-Accounts of the Revenue Account on such Transfer Date to pay principal on the Bonds , by (B) the total amount scheduled to be deposited to all of the Applicable Principal Sub-Accounts of the Revenue Account on such Transfer Date to pay principal on the Bonds .

Seventh, to the Debt Service Reserve Account to fund any shortfall in the Debt Service Reserve Requirement;

Eighth, to the Renewal Works Reserve Account to fund any Renewal Works Deficiency;

<u>Ninth</u>, if any Transfer Date is a Potential Distribution Date, to pay any interest on any Permitted Subordinated Debt (other than Sponsor subordinated debt), so long as the Restricted Payment Conditions as certified by the Company to the Account Bank (with a copy to the Trustee) are satisfied;

<u>Tenth</u>, if any Transfer Date is a Potential Distribution Date, to pay scheduled principal on any Permitted Subordinated Debt (other than Sponsor subordinated debt), so long as the Restricted Payment Conditions as certified by the Company to the Account Bank (with a copy to the Trustee) are satisfied;

<u>Eleventh</u>, if any Transfer Date is a Potential Distribution Date, to pay any optional capital expenditures, so long as the Restricted Payment Conditions as certified by the Company to the Account Bank (with a copy to the Trustee) are satisfied; and

<u>Twelfth</u>, if any Transfer Date is a Potential Distribution Date, to the Distribution Account, unless the Company has otherwise instructed the Account Bank to retain all or a portion of the amount otherwise payable to the Distribution Account in the Revenue Account pursuant to the Revenue Account Transfer Certificate delivered to the Account Bank (with a copy to the Trustee).

Notwithstanding anything in this subsection (b) above to the contrary:

(i) commencing on January 1 of any Fiscal Year for which adequate funds to meet any RTD Appropriation Obligations have not been included in such Fiscal Year's RTD Adopted Budget (an "Appropriation Deficiency") and for so long as such funds are not so included in such annual budget or a subsequent annual budget of RTD, the TABOR Portion received by the Company will be applied in the following order: <u>first</u>, to the payment of fees, administrative costs and other Company expenses; <u>second</u>, to payments to the Rebate Fund; <u>third</u>, to pay Interest Payments for deposit into each Applicable Interest Sub-Account of the Revenue Account; <u>fourth</u>, to pay Principal Payments for deposit into each Applicable Principal Sub-Account of the Revenue Account; <u>fifth</u>, to the Operating Account (for the payment of demobilization costs and other reasonable O&M Expenditures incurred in connection with such demobilization or suspension of work on the Project); and <u>seventh</u> through <u>twelfth</u> above; and

(ii) if any Transfer Date is not a Potential Distribution Date, any amounts remaining after the applications of funds through <u>eighth</u> above will be retained in the Revenue Account.

The Borrower agrees to notify the Trustee pursuant to the terms of the Loan Agreement and following receipt of such notice, the Trustee agrees to notify the Account Bank on or by January 1 of each Fiscal year if an Appropriation Deficiency has occurred. On or before the Closing Date, the Company will provide to the Account Bank (with a copy to the Trustee) a schedule (the "TABOR Schedule") setting forth the TABOR Portion applicable each month for the purposes of making the calculations required in this subsection (b), and thereafter shall promptly provide to the Account Bank an updated TABOR Schedule in the event of any change to the TABOR Portion applicable each month.

(c) The Company will deliver to the Account Bank (with a copy to the Trustee), the Revenue Account Transfer Certificate signed by a Company Representative, not later than the third Business Day prior to each Transfer Date. Each such Revenue Account Transfer Certificate will set forth the amounts proposed to be transferred from the Revenue Account to each other Project Account or other account of the Company on such Transfer Date in accordance with subclause (b) hereof. Notwithstanding the foregoing, if the effective interest rate on the applicable Bonds has been provided or is known to the Account Bank at the time of the proposed transfer, the Account Bank will be authorized to effect transfers of moneys on each Transfer Date from moneys on deposit in the Revenue Account in accordance with clauses <u>fifth</u> and <u>sixth</u> above to the Applicable Interest Sub-Account and to the Applicable Principal Sub-Account of the Revenue Account Transfer Certificate.

(d) Notwithstanding subsection (c) above, the Account Bank will agree (without further instruction) to transfer moneys on deposit in any Applicable Interest Sub-Account or Applicable Principal Sub-Account as follows:

(i) On any Transfer Date immediately prior to any Interest Payment Date, after making the transfers required by clauses <u>first</u> through <u>fifth</u> of subsection (b) above, amounts on deposit in each Applicable Interest Sub-Account shall be transferred to the Trustee and applied by the Trustee to the applicable Interest Account of the Debt Service Fund, or any appropriate sub-account thereof, to make the required payments of interest on the Bonds on such Interest Payment Date, after taking into account the amounts then on deposit in such Interest Account of the Debt Service Fund (if any) for payment of interest on the Bonds;

(ii) On any Transfer Date immediately prior to any Principal Payment Date, after making the transfers required by clauses <u>first</u> through <u>sixth</u> of subsection (b) above, amounts on deposit in each Applicable Principal Sub-Account shall be transferred to the Trustee and applied by the Trustee to the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, to make the required payments of principal on the Bonds on such Principal Payment Date, after taking into account the amounts then on deposit in such Principal Account of the Debt Service Fund (if any) for payment of the principal amount of the Bonds;

(iii) If on any Transfer Date immediately prior to any Interest Payment Date, after giving effect to the transfers set forth in clause (i) above but before giving effect to the transfers set forth in clause (ii) above, to the extent amounts on deposit in the Applicable Interest Sub-Account together with funds in the applicable Interest Account of the Debt Service Fund, or any appropriate sub-account thereof, are insufficient to pay the interest due on the next Interest Payment Date, amounts on deposit first in the Distribution Account, second in the Renewal Works Reserve Account, and third in the Applicable Interest Account of the Debt Service to the applicable Interest Account of the Debt Service and the Applicable Principal Sub-Account shall be transferred to the Trustee for deposit by the Trustee to the applicable Interest Account of the Debt Service

Fund, or any appropriate sub-account thereof, to enable the Trustee to make the required payments of interest on the Bonds on such Interest Payment Date; and

(iv) If on any Transfer Date immediately prior to any Principal Payment Date, after giving effect to the transfers set forth in clauses (i) through (iii) above, to the extent amounts on deposit in the Applicable Principal Sub-Account together with funds in the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, are insufficient to pay the principal due on the next Principal Payment Date, amounts on deposit first in the Distribution Account and second in the Renewal Works Reserve Account, shall be transferred to the Trustee for deposit by the Trustee to the applicable Principal Account of the Debt Service Fund, or any appropriate sub-account thereof, to enable the Trustee to make the required payments of principal on the Bonds on such Principal Payment Date.

(e) As necessary for the purposes of calculations to be made pursuant to clause (d) above, the Account Bank and the Trustee will each deliver a notice to the other, three (3) Business Days prior to each Transfer Date, of the account balance in the Debt Service Fund and all applicable sub-accounts thereof.

(f) Neither the Trustee nor the Account Bank will be obligated to monitor or verify (a) the accuracy of any Revenue Account Transfer Certificate provided to the Account Bank (with a copy to the Trustee) for the transfer or deposit of funds with respect to the Revenue Account, or (b) the use of amounts withdrawn from the Revenue Account pursuant to written instructions given by the Company.

(g) To the extent that, on any date of determination, amounts on deposit in the Debt Service Reserve Account are in excess of the Debt Service Reserve Requirement, such excess amounts will be deposited into the Revenue Account upon the written direction of the Company to the Trustee (with a copy to the Account Bank).

## **Distribution** Account

(a) Any amounts payable to the Distribution Account pursuant to clause <u>twelfth</u> under subsection (b) of "Revenue Account" above will be paid to the Distribution Account and will remain in the Distribution Account until and unless the Company certifies that the Restricted Payment Conditions (as described below) have been satisfied in the applicable Distribution Account Release Certificate.

(b) Funds on deposit in the Distribution Account may be paid to the Company (or to the order of the Company) on any Distribution Date requested therein; *provided* that (i) pursuant to a Distribution Account Release Certificate, a Company Representative has certified that all of the Restricted Payment Conditions were satisfied on the Calculation Date immediately preceding the requested Distribution Date (or if such Distribution Date is a Calculation Date, on such Calculation Date) and (ii) the Company delivers such Distribution Account Release Certificate (substantially in the form set forth in the Lockbox Account Agreement) signed by a Company Representative to the Account Bank (with a copy to the Trustee) within forty-five (45) days after the relevant Calculation Date and not later than the third Business Day prior to the requested Distribution Date; *provided further* that the amount of funds available to be paid to the Company on any Distribution Date will be equal to the amount of funds in the Distribution Account on the relevant Calculation Date.

(c) To the extent that any funds are on deposit in the Distribution Account, at the direction of the Company pursuant to a Lock-Up Funds Application Certificate (substantially in the form set forth in the Lockbox Account Agreement) delivered to the Account Bank (with a copy to the Trustee) not later than the third Business Day prior to the expected date of the applicable transfer (which can be, but is not required to be, a Transfer Date) as set forth in such certificate, the Account Bank will apply the amount on deposit in the Distribution Account to fund a shortfall in clauses <u>first</u> through <u>seventh</u> of subclause (b) of "Revenue Account" above, as specified in the Lock-Up Funds Application Certificate.

# **Renewal Works Reserve Account**

In the event that the O&M Contractor fails to provide a Renewal Works Letter of Credit in the amount required under the O&M Contract (the difference between the face amount of the Renewal Works Letter of Credit

required pursuant to the O&M Contract and the face amount of the Renewal Works Letter of Credit being the "Renewal Works Deficiency"), the Renewal Works Reserve Account will be funded in accordance with the provisions of <u>eighth</u> under subclause (b) of "Revenue Account" above. In the event that the O&M Contractor provides the Renewal Works Letter of Credit that it otherwise failed to deliver, the amount of the Renewal Works Deficiency that resulted from its failure to deliver such Renewal Works Letter of Credit will be released to the Revenue Account by the Account Bank without further instruction. Amounts in the Renewal Works Reserve Account Withdrawal Certificate, on any Business Day specified in such Renewal Works Reserve Account Withdrawal Certificate, provided that the Account Bank has received (with a copy to the Trustee) such Renewal Works Reserve Account Withdrawal Certificate signed by a Company Representative three Business Days in advance of the requested transfer date.

#### **Operating** Account

Project Revenues received by the Company will be transferred into the Operating Account in accordance with the provisions of subclause (b) of "Revenue Account" above. Any withdrawals from the Operating Account will not require compliance with any conditions (except that amounts withdrawn will be applied by the Company to pay O&M Expenditures). Unless a Trustee Enforcement Notice and Direction has been delivered to the Account Bank (or to the applicable financial institution with whom a replacement Operating Account is established, as the case may be), the Company will have the right to make withdrawals from the Operating Account. Notwithstanding anything to the contrary in this paragraph, the Company may establish an operating account with another financial institution if (1) the replacement operating account contains a "deposit account" and, at the option of the Company, a "securities account" (both as defined in the UCC), (2) the Company executes a control agreement in the form attached to the Lockbox Account Agreement, or any other form of control agreement as agreed among the applicable financial institution, the Company and the Trustee and (3) the Company provides notice of the replacement operating account to the Account Bank (with a copy to the Trustee).

## **Borrower Change In Law Contingency Account**

The Borrower Change In Law Contingency Account may be funded at any time with funds on deposit in the Revenue Account in accordance with the Lockbox Account Agreement. Amounts deposited in the Borrower Change In Law Contingency Account may be used for any payments required by the Company in connection with Incurred Costs related to a Change in Law pursuant to the Concession Agreement. Pursuant to written instructions signed by a Company Representative delivered to the Account Bank (with a copy to the Trustee) not later than the third Business Day prior to the expected date of applicable withdrawals and transfers, the Company shall have the right to make withdrawals from the Borrower Change In Law Contingency Account for such purposes or to instruct the Account Bank to transfer any moneys deposited in the Borrower Change In Law Contingency Account to the Revenue Account.

## Funds as Lockbox Account Collateral

Any deposit made into the Lockbox Project Accounts (except through clerical or other manifest error or in a manner that is otherwise inconsistent with the Lockbox Account Agreement) will be irrevocable and all cash, cash equivalents, instruments, investments and other securities on deposit in the Project Accounts will be subject to the Security Interest of the Security Agreement and will be held by the Lockbox Account Bank as collateral for the benefit of the Secured Parties as provided in the Lockbox Account Agreement.

#### Investment

All moneys held as part of any Lockbox Project Account will be deposited or invested and reinvested by the Account Bank, at the direction of the Company, in Account Agreement Permitted Investments (at the risk and expense of the Company) and in compliance with the Code and any applicable State Tax Laws. The Account Bank will not be required to take any action with respect to investing the funds in any Lockbox Project Account in the absence of written instructions by the Company (to the extent provided in accordance with the terms of the Lockbox Account Agreement). The Account Bank will not be liable for any loss or Tax resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Lockbox Account Agreement. Earnings and losses from the investment of moneys held in any Lockbox Project Account will be charged against the Account in which they were realized. The Account Bank will sell and reduce to cash a sufficient amount of the investments held

in any Lockbox Project Account whenever the cash balance therein is insufficient to make any payment to be made therefrom. If and when cash is required for disbursement in accordance with the Lockbox Account Agreement, the Account Bank will be authorized, without instructions from the Company, to the extent necessary to make payments required pursuant to the Lockbox Account Agreement, in the event the Company fails to direct the Account Bank to do so in a timely manner, to cause Account Agreement Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Account Bank deems reasonable and prudent under the circumstances. All funds in the Lockbox Project Accounts and all Account Agreement Permitted Investments made in respect thereof will be held by the Account Bank and the interests of the Company therein will constitute part of the security subject to the pledge and security interest created by the Security Documents. Ratings of Account Agreement Permitted Investments will be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories. In the absence of written directions for investment, the moneys held pursuant to the Lockbox Account Agreement will be held uninvested in cash. In determining market value of Permitted Investments, the Account Bank may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available.

## Withdrawal and Application of Funds; Priority of Transfers from Lockbox Project Accounts; Event of Default

(a) The Account Bank will comply with any certificate of the Company delivered to it pursuant to the Lockbox Account Agreement or the Indenture.

(b) Notwithstanding anything to the contrary contained in the Lockbox Account Agreement, upon receipt of a Trustee Enforcement Notice and Direction, the Account Bank will follow the instructions of the Trustee in accordance with the subsection entitled "Enforcement of Remedies" below.

(c) The Account Bank will not be obligated to monitor or verify (i) the accuracy of any certificate delivered to it pursuant to the Lockbox Account Agreement or other written instructions provided to the Account Bank for the transfer or deposit of funds with respect to any Lockbox Project Account, or (ii) the use of amounts withdrawn from the Lockbox Project Accounts pursuant to written instructions given by the Company.

# **Termination of Project Accounts**

Upon the satisfaction in full of all principal and interest owing with respect to the Bond Obligations as confirmed in writing by the Trustee (which confirmation the Trustee agrees to provide promptly after receiving a certification from the Company), the Lockbox Account Agreement will terminate, and the Account Bank will, within thirty (30) days of receipt of a request from the Company and at the expense of the Company, close the Lockbox Project Accounts and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Company. Thereafter, the Account Bank will be released from any further obligation to (a) comply with entitlement orders originated by the Trustee to the extent that any of the Lockbox Project Accounts is a "securities account" under the applicable provision of the UCC, (b) comply with instructions originated by the Trustee to the extent that any of the Lockbox Project Accounts is a "deposit account" under the applicable provision of the UCC, (b) comply with instructions originated by the Trustee to the extent that any of the Lockbox Project Accounts is a "deposit account" under the applicable provision of the UCC or (c) comply with any obligation under any Financing Document except as specifically provided therein. Nothing contained in this paragraph will be construed to modify or otherwise affect the Account Bank's Security Interest in the Lockbox Project Accounts and the funds therein prior to such transfer.

# **Securities Intermediary**

(a) The Securities Accounts as set forth in the Lockbox Account Agreement will be established and maintained as securities accounts with a securities intermediary. Each of the parties to the Lockbox Account Agreement, including The Bank of New York Mellon Trust Company N.A., have agreed that The Bank of New York Mellon Trust Company N.A. (or any successor thereto) will act as the securities intermediary (in such capacity, the "Securities Intermediary") under and for the purposes of the Lockbox Account Agreement and for so long as The Bank of New York Mellon Trust Company N.A. (or any successor thereto) is the Account Bank.

(b) The Securities Intermediary agrees with the parties to the Lockbox Agreement that each of the Securities Accounts will be an account to which financial assets may be credited and to undertake to treat the Account

Bank as entitled to exercise the rights that comprise such financial assets. The Securities Intermediary agrees with the parties to the Lockbox Agreement that each item of property credited to each Securities Account will be treated as a financial asset. Each of the Account Bank and the Securities Intermediary represents and warrants that it has not entered into any agreement or taken any other action that gives any Person other than the Account Bank control over any of the Securities Accounts or that is otherwise inconsistent with the Lockbox Account Agreement. The Company, the Issuer, the Trustee, the Account Bank and the Securities Intermediary agrees that it will not become a party to any agreement or take any action that gives any Person other than the Account Bank control over any of the Securities Intermediary agrees that is otherwise inconsistent with the Lockbox Account Agreement. The Securities Accounts or that is otherwise inconsistent with the Lockbox Account Bank control over any of the Securities Intermediary agrees that any financial assets credited to such Securities Accounts, or any "security entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, will not be subject to any security interest, lien, encumbrance or right of setoff in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Account Bank).

(c) The Account Bank, the Company and the Trustee intend that the Account Bank be the entitlement holder with respect to the Securities Accounts. In any event, the Securities Intermediary will agree that it will comply with entitlement orders with respect to the Securities Accounts originated by the Account Bank without further consent by the Company or any other Person. The Securities Intermediary will covenant that it will not agree with any person other than the Account Bank to comply with entitlement orders with respect to the Securities Intermediary will covenant that it will not agree with any person other than the Account Bank to comply with entitlement orders with respect to the Securities Accounts originated by any Person or entity other than the Account Bank.

(d) The Securities Intermediary will not change the name or account number of any Securities Account without the prior written consent of the Account Bank and at least five (5) Business Days' prior notice to the Trustee and the Company, and will not change the entitlement holder. The Securities Intermediary will at all times act as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Securities Account pursuant to the Lockbox Account Agreement. To the extent, if any, that the Account Bank is deemed to hold directly, as opposed to having a security entitlement in, any financial asset held by the Securities Intermediary for the Account Bank, the Securities Intermediary will agree that it is holding such financial asset as the agent of the Account Bank and will expressly acknowledge and agree that it has received notification of the Secured Parties' security interest in such financial asset for the benefit of the Secured Parties.

(e) Each Securities Account will remain at all times with a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which will be rated "A" or better by S&P or "A2" or better by Moody's and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary will give notice to the Account Bank, the Trustee and the Company of the location of the Securities Accounts and of any change thereof prior to the use or change thereof.

(f) Any income received by the Account Bank with respect to the balance from time to time on deposit in each Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Securities Account, will be credited to the applicable Securities Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Securities Account together with any investments in overnight securities from time to time made pursuant to the Lockbox Account Agreement will constitute part of the Lockbox Account Collateral for the Bond Obligations pledged to the Trustee pursuant to the Security Agreement and will be held for the benefit of the Trustee, the other Secured Parties and the Company as their interests will appear under the Lockbox Account Agreement and will not constitute payment of the Bond Obligations (or any other obligations to which such funds are provided in the Lockbox Account Agreement to be applied) until applied thereto as provided in the Lockbox Account Agreement.

(g) In the event that, notwithstanding the last sentence of subsection (b) above, the Securities Intermediary has or subsequently obtains by agreement, operation of law or otherwise a security interest in any of the Securities Accounts, or any financial asset credited thereto, or any "security entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations)

with respect thereto, the Securities Intermediary hereby agrees that such security interest will be subordinate to the security interest of the Account Bank.

(h) The "securities intermediary's jurisdiction" of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) will be the State of New York.

(i) Terms used in this Section that are defined in the UCC will have the meanings set forth in the UCC. Without limiting the foregoing, the term "securities intermediary" will, with respect to book-entry securities, have the meaning given to it under 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and bonds); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board), 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18 C.F.R. Part 1314 (book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association).

(j) To the extent that the Lockbox Project Accounts are not considered "securities accounts" (within the meaning of Section 8-501(a) of the UCC), the Lockbox Project Accounts will be deemed to be "deposit accounts" (as defined in Section 9-102(a)(29) of the UCC), which the Account Bank will maintain with the Securities Intermediary acting not as a securities intermediary but as a "bank" (within the meaning of Section 9-102(a)(8) of the UCC). The Securities Intermediary will agree to comply with any and all instructions originated by the Account Bank directing disposition of funds in the Lockbox Project Accounts without any further consent of the Company.

## **Termination Proceeds**

The Company will deposit in the Revenue Account proceeds of any Applicable Termination Amount, including any TABOR Portion or Additional TABOR Portion, received by the Company under the Concession Agreement in respect of a termination of the Concession Agreement, unless the Bonds have been accelerated in which case, such proceeds will be applied in accordance with Section 7.3 of the Indenture. In connection with redemption of the Bonds as set forth in the Indenture, the Company will instruct the Account Bank to deliver any lump sums in respect of such Applicable Termination Amount to the Trustee for application to the applicable sub-account of the Debt Service Fund.

## Lockbox Account Collateral and Remedies

## Administration of Lockbox Account Collateral

The Lockbox Account Collateral will be held by the Account Bank for the benefit of the Company and the Trustee pursuant to the terms of the Lockbox Account Agreement and will be administered by the Account Bank in the manner contemplated thereby.

# Notice of Event of Default

The Account Bank, unless an Account Bank Representative has actual knowledge thereof, will not be deemed to have any knowledge of any Event of Default under the Financing Documents unless and until it receives written notice from the Company, the Trustee or any other Secured Party describing such Event of Default in reasonable detail. If the Account Bank receives such notices from a Person other than the Trustee, the Account Bank will deliver a copy thereof to the Trustee.

## **Enforcement of Remedies**

Upon receipt by the Trustee of enforcement directions pursuant to the Indenture and the occurrence and during the continuance of an Event of Default under the Financing Documents, the Trustee may notify the Account Bank in writing (with a copy thereof delivered to the Company), of such receipt and Event of Default (each notice a "Trustee Enforcement Notice and Direction"), whereupon, to the extent provided in such Trustee Enforcement Notice

and Direction (as the same may be supplemented and modified) (i) the Company will not have any further right to disbursements from the Lockbox Project Accounts, and (ii) the Trustee may (A) direct the Account Bank to liquidate and transfer any amounts then invested in Account Agreement Permitted Investments to the Lockbox Project Accounts or the Debt Service Fund or reinvest such amounts in other Account Agreement Permitted Investments as the Trustee may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable the Account Bank, as agent for the Secured Parties, or the Trustee to exercise and enforce the Secured Parties' rights and remedies under the Lockbox Account Agreement or the other Financing Documents with respect to any Lockbox Account Collateral, (B) exercise any and all rights and remedies available to it under the Lockbox Account Agreement or the other Financing Documents and/or as a secured party under the UCC, and (C) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Lockbox Account Collateral (or any portion thereof) as the Trustee may determine in its sole discretion.

## Waiver by the Company

The Company will expressly waive, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except to the extent expressly provided for in the Lockbox Account Agreement) in connection with the Lockbox Account Agreement or the Lockbox Account Collateral. The Company will acknowledge and agree that ten (10) days' prior written notice of the time and place of any public sale of the Lockbox Account Collateral or any other intended disposition thereof will be reasonable and sufficient notice to the Company within the meaning of the UCC.

## **Remedies of the Secured Parties**

Unless otherwise consented to in writing by the Trustee (acting in accordance with the terms of the Indenture), no Secured Party, individually or together with any other Secured Parties, will have the right to, nor will it, exercise or enforce any of the rights, powers or remedies which the Account Bank is authorized to exercise or enforce under the Lockbox Account Agreement.

## **Miscellaneous Provisions**

## Amendments; Waivers

(a) Any term, covenant, agreement or condition of the Lockbox Account Agreement or any of the other Security Documents may be amended or waived only by an instrument in writing signed by each of the Account Bank (acting upon the instruction of the Trustee, in reliance of an opinion of counsel and acting in accordance with the terms of the Indenture), the Company and the Trustee (with a copy to the Issuer), and, with respect to any amendment or waiver of the Lockbox Account Agreement which would have a material adverse effect on the Issuer or the Owners of the Bonds, with the consent of the Issuer; provided that:

(i) only the Trustee may waive any rights of the Trustee under any provision of the Lockbox Account Agreement; no consent to any departure by the Company from the Lockbox Account Agreement (or the Security Documents) will be effective unless in writing signed by the applicable parties specified in the Lockbox Account Agreement, and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given; and

(ii) the consent of the Securities Intermediary will be required for any amendment to the "Securities Intermediary" section of the Lockbox Account Agreement or any other amendment that would modify the rights or obligations of the Securities Intermediary.

(b) The waiver (whether express or implied) by the Account Bank of any breach of the terms or conditions of the Lockbox Account Agreement, and the consent (whether express or implied) of any Secured Party will not prejudice any remedy of the Account Bank or any Secured Party in respect of any continuing or other breach of the terms and conditions of the Lockbox Account Agreement, and will not be construed as a bar to any right or remedy which the Account Bank or any other Secured Party would otherwise have on any future occasion under the Lockbox Account Agreement.

(c) No failure to exercise nor any delay in exercising, on the part of the Account Bank or any other Secured Party, of any right, power or privilege under the Lockbox Account Agreement will operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under the Lockbox Account Agreement will preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies under the Lockbox Account Agreement and under the other Financing Documents are cumulative and are not exclusive of any other remedies that may be available to the Account Bank, whether at law, in equity or otherwise.

## Governing Law

The Lockbox Account Agreement will be governed by and construed in accordance with the substantive laws of the State of New York.

## Account Bank's Rights

(a) If at any time the Account Bank is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Lockbox Account Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Account Bank is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate; and if the Account Bank complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Account Bank will not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

In the event of any dispute between or conflicting claims by or among the Company, the Secured (b) Parties and/or any other person or entity with respect to any property being held by the Account Bank in connection with the Lockbox Account Agreement or the other Security Documents, the Account Bank will be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict will continue, and the Account Bank will not be or become liable in any way to the Company, the Trustee or any other party for failure or refusal to comply with such conflicting claims, demands or instructions. The Account Bank will be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands will have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Account Bank or (ii) the Account Bank will have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. Any court order, judgment or decree will be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Account Bank, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected. The Account Bank will act on such court order and legal opinions without further question.

(c) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. When any account or sub-account is opened, the Account Bank will be entitled to such information that will allow it to identify relevant parties.

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#### **APPENDIX I**

#### SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a summary of selected provisions of the Loan Agreement and is not a full statement of the terms of the Loan Agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement.

#### **Company to Provide Funds**

In the event that proceeds derived from the Series 2020 Loan, or any other available (or to be available) funds and other funds pursuant to the Concession Agreement are not sufficient for purposes of the Refinancing, the Company will not be entitled to any reimbursement from the Issuer or the Trustee for the payment of such costs nor will the Company be entitled to any abatement, diminution or postponement of its payments under the Loan Agreement.

#### **Compliance with Indenture**

In accordance with any applicable provisions of the Indenture, at the request of the Company, the Issuer will take any action directed by the Company to the extent required under, or permitted by, the provisions of the Indenture or the Loan Agreement. The Company will take all action required to be taken by the Company in the Indenture as if the Company were a party to the Indenture.

#### **Amounts Payable**

The Company will repay the Series 2020 Loan, as follows: on or before any Interest Payment Date for the Series 2020 Bonds or any other date that any payment of interest, principal or Redemption Price on the Series 2020 Bonds is required to be made in respect of the Series 2020 Bonds pursuant to the Indenture (which payments for principal and interest will be in the amounts and at the rates set forth on the debt service schedule attached to the Loan Agreement and as amended from time to time pursuant to the Indenture), until the payment of interest, principal or Redemption Price on the Series 2020 Bonds will have been fully paid or provision for the payment thereof will have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable Account of the Debt Service Fund, will enable the Trustee to pay to the Owners of the Series 2020 Bonds the amount due and payable on such date as interest, principal or Redemption Price on the Series 2020 Bonds the Indenture.

#### **Obligations of Company Unconditional**

The obligations of the Company to make the payments required in the subsection "Amounts Payable" above and to perform and observe all other agreements and covenants contained in the Loan Agreement will be absolute and unconditional.

#### **Prepayment and Redemption**

The Company will have the option to prepay its obligations under the Loan Agreement at the times and in the amounts as necessary to cause the Issuer to redeem the Series 2020 Bonds in accordance with the terms of the Indenture and the Series 2020 Bonds. The Issuer, at the request of the Company, if applicable, will take all steps (other than the payment of funds necessary to effect such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the Outstanding Series 2020 Bonds, as may be specified by the Company and required by the Indenture, on the date established for such redemption.

#### **Covenants of the Company**

Covenants made by the Company under the Loan Agreement include, but are not limited to, the following:

#### **Delivery of Additional TABOR Portion Notice**

The Company will deliver to RTD and the Trustee an Additional TABOR Portion Notice prior to the effective date of any amendment to the State Constitution or any legislation that would, in the reasonable determination of either (i) the Company or (ii) the Trustee, at the written direction of the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds provided in accordance with Section 10.4 of the Indenture, adversely affect RTD's ability or obligation to pay the Additional TABOR Portion (in the case of clause (ii), such determination to be evidenced by a written notice filed with the Company and the Additional TABOR Portion Notice to be delivered promptly upon the receipt thereof by the Company).

#### Maintenance of Existence

Throughout the term of the Loan Agreement, the Company will maintain (a) its existence as a limited liability company, (b) its qualification to do business in the State and in every jurisdiction where such qualification is required by applicable Law, and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and the operation of the Project.

#### Sale or Encumbrance of Interests under Concession Agreement

The Company will not sell or otherwise dispose of all or any part of its interests under the Concession Agreement unless such sale or disposition is not expected to result in a Material Adverse Effect and is not materially adverse to the rights of the Secured Parties, except in respect of any Permitted Security Interest or as contemplated by the Security Documents and otherwise in accordance with any applicable provisions of the Loan Agreement and the Concession Agreement. The Company will not create, incur, assume, permit or suffer to exist any Security Interest upon or with respect to its interests under the Concession Agreement, other than Permitted Security Interests.

#### **Operation and Maintenance of Project**

The Company will operate and maintain the Project (or cause the same to be operated and maintained) in accordance with the Concession Agreement and make all necessary repairs, renewals and replacements, in each case, in accordance in all material respects with the Concession Agreement and in compliance in all material respects with applicable Laws and Governmental Approvals material to the conduct of its business and the terms of the Insurance required under the Loan Agreement, except to the extent that the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

#### Insurance

The Company will maintain or will require its contractors (including the Design Build Contractor) to maintain Insurance that is required to be obtained by the Company and its contractors to satisfy the requirements of the Concession Agreement. Such policies will (to the extent permitted by the Concession Agreement) name the Trustee on behalf of the Secured Parties, as additional payee as their interests may appear (pending any existing contractual overrides). The Company will notify the Trustee within thirty (30) days of cancellation (ten (10) days for non-payment of premium) of any Insurance required to be obtained by the Company. The Company will not take, or fail to take, any action, which would result in any Insurance obtained by the Company lapsing, becoming cancelled or otherwise being rendered void, voidable or ineffective and will not cancel or vary any policy of Insurance required to be maintained by it unless the Concession Agreement requires otherwise.

#### Accounts and Reporting

(a) The Company will keep proper books of records and accounts in which complete and correct entries will be made of its transactions in accordance with GAAP. The Project Accounts, such books and all other records and papers relating to the Project, will, to the extent permitted by Law, at reasonable times, be subject to the inspection of the Trustee or its representative upon reasonable notice. The Company will employ and maintain independent auditors of nationally recognized standing to audit its annual financial statements. Concurrent with such appointment, the Company will authorize such accountants to communicate directly with the Trustee and/or the Account Bank and

to respond to queries of the Trustee or the Account Bank regarding the Company's accounts and operations by executing and delivering to such accountants (with a copy to the Trustee and the Account Bank) an irrevocable authorization substantially in the form set forth in the Loan Agreement (at the Trustee's direction) and/or the Account Bank (at the Account Bank's direction).

(b) The Company will deliver the following information to the Issuer and the Trustee:

(i) audited financial statements for the Company within one hundred twenty (120) days after the end of each Fiscal Year of the Company;

(ii) unaudited financial statements for the Company within forty-five (45) days after the end of each fiscal quarter of the Company;

(iii) simultaneously with the delivery of the financial statements in subclauses (i) and (ii) above, a certificate of the Company that states that no Event of Default has occurred and is continuing or if an Event of Default has occurred and is continuing the steps taken or to be taken by the Company to remedy such Event of Default;

(iv) details of the filing of any actual litigation, suit or action, or the delivery to the Company of any written claim against the Company or the Project in excess of \$10,000,000 or in any lesser amount which could reasonably be expected to have a Material Adverse Effect;

(v) details of any Potential Event of Default or Event of Default and the steps taken or to be taken by the Company to remedy such Potential Event of Default or Event of Default;

(vi) details of any penalties or damages due from the Company under the Material Project Contracts;

(vii) copies of all notices of default or termination delivered to the Company with respect to any Material Project Contract;

(viii) notice of any material insurance claims in excess of \$5,000,000;

(ix) notice of the occurrence of a Force Majeure Event, Relief Event, Concessionaire Termination Event, RTD Termination Event or FM Termination Event under any Material Project Contract;

(x) notification of any new or historical Release of Hazardous Materials (other than previously disclosed in writing by the Company) that could reasonably be expected to cause or does cause a Material Adverse Effect;

(xi) notification if the Availability Ratio of any Commuter Rail Service is less than 90% in six or more months of any eight-month period;

(xii) a copy of any (A) written notice to the Company setting forth that any material Governmental Approval will not be granted or renewed, or will not be granted or renewed in time to allow continued operation of the Project in compliance with all material Governmental Rules, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended and (B) notification of any casualty, damage or loss to the Project, whether or not insured, in excess of \$5,000,000 (or the equivalent thereof in other currencies) for any one casualty or loss or in the aggregate in any calendar year;

(xiii) a copy of any notice of any proposed condemnation, eminent domain or similar action with respect to all or a substantial portion of the property of the Eagle P3 Project by RTD or any other Governmental Authority; and

(xiv) a copy of any notice of any Appropriation Deficiency.

(c) The Company will deliver to the Dissemination Agent for delivery to the Municipal Securities Rulemaking Board (the "MSRB") via its Electronic Municipal Market Access system (or such other system as shall be established by the MSRB), not later than 90 days after the end of each fiscal quarter of the Company, a report showing (A) the operating data for the Project for the previous quarter and for the year to date, including total Project Revenues and total O&M Expenditures incurred and (B) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual O&M Expenditures incurred and the budgeted O&M Expenditures, together with a brief narrative explanation of the reasons for any such variance of 10% or more.

#### **Project Accounts**

The Company will establish and maintain each Project Account and other accounts required from time to time by the Financing Documents and will not maintain or permit to be maintained any accounts other than as permitted and contemplated in the Lockbox Account Agreement, the Indenture or the other Financing Documents.

#### Compliance with Law

The Company will comply in all material respects with all applicable Laws, as and when required, for which failure to comply would reasonably be expected to have a Material Adverse Effect.

#### Use of Proceeds; Tax Covenant

Neither the Issuer nor the Company will cause any proceeds of the Bonds to be expended, except pursuant to the Indenture and the Loan Agreement.

The Company will covenant for the benefit of the Issuer and the Owners of the Series 2020A Bonds that it will not take any action or omit to take any action with respect to the Series 2020A Bonds, the proceeds thereof, any other funds of the Company or any of the facilities financed with the proceeds of the Series 2020A Bonds if such action or omission (a) would cause the interest on the Series 2020A Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (b) would cause interest on the Series 2020A Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code, or (c) would cause interest on the Series 2020A Bonds to lose its exclusion from or State alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Series 2020A Bonds until the date on which all obligations of the Company in fulfilling the above covenant under the Code and Colorado law have been met.

#### Further Assurances and Corrective Instruments

The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and further instruments as may reasonably be required for carrying out the expressed intentions of the Loan Agreement and the Lockbox Account Agreement and as may be necessary or desirable for assuring, conveying, granting, assigning, securing and confirming the Security Interests (whether now existing or hereafter arising) granted by or on behalf of the Company to the Trustee for the benefit of the Secured Parties, pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which the Company may become bound to grant, and the subject of each such Security Interest is and will be free and clear of any other Security Documents, other than liens entitled to priority as a matter of Law or as permitted by such documents, any other Financing Document or the Loan Agreement, and all limited liability company action on the part of the Company to that end will be duly and validly taken at such times. The Company will, at all times, to the extent permitted by Law, defend, preserve and protect the Security Interests granted pursuant to the Security Documents and all the rights of the Trustee for the benefit of the Secured Parties under the Security Documents against all claims and demands of all Persons whomsoever, except in each case for Permitted Security Interests.

#### **Transaction Documents**

The Company will (a) perform and observe all of its covenants and its other obligations contained in each Transaction Document to which it is a party and (b) enforce against any other party thereto each covenant or obligation of such party in each Transaction Document to which it is a party or an intended beneficiary in accordance with its terms, except, in the case of clause (a) and clause (b) above, to the extent that the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

The Company will not enter into any material contracts or agreements (other than the Transaction Documents or documents incidental or ancillary thereto) that are not related to the Project (or incidental or ancillary thereto).

#### **Recording and Filing; Other Instruments**

The Company will file and refile and record and re-record or will cause to be filed and re-filed and re-recorded all instruments required to be filed and re-filed and recorded or re-recorded and will continue or cause to be continued the Security Interests of such instruments for so long as any of the Series 2020 Bonds will be Outstanding. The Issuer will execute and deliver all instruments and will furnish all information and evidence deemed necessary or advisable in order to enable the Company to fulfill its obligations as provided in the Loan Agreement and the Security Documents.

#### Approvals; Governmental Authorizations

At all times, the Company will obtain on a timely basis and thereafter maintain in full force and effect all Governmental Approvals necessary as and when required (a) for the use, operation and maintenance of the Project and (b) to comply with its obligations under the Transaction Documents, except in either case where the failure to obtain or maintain any such Governmental Approval could not reasonably be expected to have a Material Adverse Effect.

#### Taxes

The Company will timely pay and discharge all Taxes and other assessments and governmental charges or levies imposed upon the Company or the Project prior to the date on which penalties, fines or interest attach thereto, provided that the Company may permit any such Tax, assessment, charge or levy to remain unpaid if it is being contested in good faith and adequate reserves have been provided and are maintained in accordance with GAAP and except where the failure to pay and discharge could not reasonably be expected to have a Material Adverse Effect.

#### **Business** Activities

The Company will not directly engage at any time in any business other than the development, construction and operation of the Project and any business that is ancillary and related thereto.

## Limitation on Fundamental Changes; Sale of Assets, Etc.

The Company will not:

(a) merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, profit-sharing or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Company; or

(b) sell, assign or dispose of or direct the Trustee or the Account Bank, as applicable, to sell, assign or dispose of, any material assets of the Project in excess of \$5,000,000 per year except:

(1) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Concession Agreement and the other Material Project Contracts;

(2) sales or other dispositions of damaged, obsolete, worn out or defective equipment in the ordinary course of business;

(3) sales or other dispositions of surplus property not required for the operation of the Project in the ordinary course of business;

(4) sales, transfers or other dispositions of Permitted Investments and solely with respect to the Lockbox Account Collateral, sales, transfers or other dispositions of Account Agreement Permitted Investments; and

(5) sales that would constitute Permitted Indebtedness.

#### Arm's-Length Transactions

The Company will not enter into any material transaction or agreement with any Affiliate unless such transaction or agreement is entered into on fair and commercially reasonable terms no less favorable to the Company than the Company could reasonably obtain in a comparable arm's-length transaction with a Person that is not an Affiliate.

#### Additional Parity Bonds; Limitation on Indebtedness

After the delivery of the Loan Agreement, upon request by the Company the Issuer may issue the Additional Parity Bonds in accordance with the Indenture.

The Company will not create, incur or assume any Indebtedness other than Permitted Indebtedness.

#### **Permitted Investments**

The Company will not make or direct the Trustee to make any investments other than Permitted Investments and solely with respect to the Lockbox Account Collateral, will not make or direct the Account Bank to make any investment other than Account Agreement Permitted Investments.

#### **Reporting on Variances in O&M Expenditures**

Not later than 90 days after the end of each fiscal quarter of the Company, the Company will deliver to the Trustee and the Issuer a report showing (a) the operating data for the Project for the previous quarter and for the year to date, including total Project Revenues and total O&M Expenditures incurred and (b) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual O&M Expenditures incurred and the budgeted O&M Expenditures, together with a brief narrative explanation of the reasons for any such variance of 10% or more.

#### Limitation on Partial Termination Payments under the Concession Agreement.

Without the consent of the Trustee given solely at the written direction of 100% of the Owners of the Series 2020 Bonds, provided in accordance with Section 10.4 of the Indenture, the Company will not give its consent to RTD regarding the payment of only a portion of any outstanding Applicable Termination Amount owed to the Company in connection with a refinancing of the TABOR Portion and Additional TABOR Portion pursuant to Section 42.4(f) of the Concession Agreement. For the avoidance of doubt, nothing in the preceding sentence requires the Trustee's consent for the payment of the whole amount of any outstanding Applicable Termination Amount.

#### Negative Pledge

The Company will not create, incur, assume or permit to exist any Security Interest on any property or asset, including its revenues (including accounts receivable) or rights in respect of any thereof, now owned or hereafter acquired by it, except Permitted Security Interests.

#### Access to the Project

The Company will give the Trustee and its respective consultants and representatives access to the Project site, at the sole cost of such Persons, at any reasonable time and as often as may reasonably be requested, and, so long as no Potential Event of Default or Event of Default has occurred and is continuing, upon reasonable prior notice to the Company, in each case during official business hours and in a manner that cannot reasonably be expected materially to interfere with or disrupt the performance by the Company or any other party of its obligations with respect to the operation of the Project, and permit the Trustee and its respective consultants and representatives to discuss the Project and the business, accounts, operations, properties and financial and other conditions of the Company with officers and employees of the Company to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Contract, subject to all applicable confidentiality undertakings. The Company will offer all reasonable assistance to such Persons in connection with any such visit. Upon the occurrence and during the continuance of a Potential Event of Default or an Event of Default, if the Trustee requests that any of its consultants or representatives be permitted to make such visit, the reasonable fees and expenses of the Trustee and its respective consultants and representatives in connection with such visit will be paid by the Company at its sole expense.

#### Material Project Contracts

The Company will not amend or waive in any material respect or terminate any Material Project Contract, including the Trustee's Instructions delivered by RTD pursuant to the Concession Agreement (Attachment 25), or enter into any other material agreement without the prior written consent of the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds provided in accordance with Section 10.4 of the Indenture; provided that (a) the Company and the O&M Contractor may enter into change orders and other amendments under the O&M Contract required for compliance with the Concession Agreement, including in connection with an RTD Proposed Change, (b) the Company and the Design Build Contractor may enter into change orders and amendments under the Design Build Contract and the Rolling Stock Supply Contract required for compliance with the Concession Agreement, including in connection with an RTD Proposed Change, and (c) in the event that clause (a) or (b) do not apply, the Company may amend, waive or terminate any Material Project Contract if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect.

Notwithstanding the foregoing, if such Material Project Contract being terminated is the Design Build Contract, the Design Build Guaranty, the O&M Contract or the O&M Guaranty, no further consent of the Trustee or the Owners of the Series 2020 Bonds shall be required for such termination if (i) such Material Project Contract is contemporaneously replaced by a replacement agreement between the Company and an Acceptable Replacement Party and (ii) such replacement agreement obligates the Acceptable Replacement Party to fulfill all of the remaining obligations of the party it is replacing (on economic terms no less favorable to the Borrower taken as a whole); provided, that if such Material Project Contract or counterparty to such Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Company will contemporaneously cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or that is otherwise reasonably acceptable to the Trustee.

#### **Events of Default Defined**

The following events will constitute "Events of Default" under the Loan Agreement:

(a) Failure by the Company to pay any amount required to be paid under the Loan Agreement as described in "Amounts Payable" above;

(b) Failure by the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Loan Agreement, the Lockbox Account Agreement or any other Financing Document, other than as provided in clause (a) above and clause (k) below, and such non-compliance will remain unremedied for a period of sixty (60) days after the earlier of (i) written notice specifying such failure will have been given to the Trustee by the Company or (ii) written notice specifying such failure and requesting that it be remedied will have been given to the Company by the Trustee, or such longer period as is reasonably necessary under the

circumstances to remedy such failure, such extension not to exceed one hundred eighty (180) days without prior written approval by the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds delivered by the Trustee pursuant to Section 10.4 of the Indenture;

(c) The occurrence of a Bankruptcy Event with respect to the Company;

(d) Any of the representations, warranties or certifications of the Company made in or delivered pursuant to any Financing Document, including the Loan Agreement, will prove to have been incorrect in any material respect when made and a Material Adverse Effect could reasonably be expected to result therefrom, unless such misrepresentation is capable of being cured and is cured within thirty (30) days after the Trustee's receipt of written notice from any Secured Party, the Company or the Issuer of such misrepresentation;

(e) Occurrence of a Concessionaire Termination Event, and such Concessionaire Termination Event will be continuing beyond any cure period (including any extended cure period granted by RTD under the Consession Agreement) applicable to the Company and has not been waived by RTD; and RTD is entitled to and serves a notice of termination to the Company in writing pursuant to the terms of the Concession Agreement as a result thereof and such termination is not delayed pursuant to Section 41.6 (Disputed Termination) of the Concession Agreement;

(f) Failure by the Company to perform or observe any material covenant, agreement or obligation under any Material Project Contract (unless such failure could not reasonably be expected to have a Material Adverse Effect), and the Company will have failed to cure such failure or to obtain an effective written waiver thereof within the grace period provided in such Material Project Contract; *provided*, however, that if such cure or waiver cannot reasonably be obtained within the applicable period, the Company will be entitled to an extension of such time (such extension not to exceed one hundred eighty (180) days) if corrective action is instituted by the Company within the applicable period and diligently pursued until such failure is corrected;

(g) One or more non-appealable judgments against the Company for the payment of money in an aggregate amount in excess of \$10,000,000 and the same will remain undischarged for a period of thirty (30) consecutive days during which execution will not be effectively stayed;

(h) The Concession Agreement, including Section 42.4 therein, for any reason ceases to be a valid and binding obligation of RTD and will remain uncorrected for fifteen (15) days;

(i) The Company suspends or abandons all or a material part of the Project or its activities to operate or maintain the Project, in each case resulting in any Concessionaire Termination Event;

(j) Any Financing Document ceases to be in effect, unless otherwise in accordance with its terms or unless such document is replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee as instructed by the Owners of a majority in the aggregate principal amount of the Series 2020 Bonds, in accordance with Section 10.4 of the Indenture, within thirty (30) days following the earlier of (i) the Company's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Company by the Trustee, or such longer period, not exceeding one hundred eighty (180) days, reasonably necessary to effect such replacement;

(k) The O&M Contract and/or the O&M Guaranty cease to be in full force and effect during the Operating Period, and such document is not replaced by a document reflecting all of the remaining obligations of the party being replaced, on terms and conditions (including economic terms) no less favorable to the Company taken as a whole, with an Acceptable Replacement Party, within sixty (60) days of such termination or such longer period as is reasonably necessary to effect such replacement, if corrective action is instituted by the Company within such sixty (60) day period and is diligently pursued until such replacement is effected, such extension not to exceed one hundred and twenty (120) days from the date such document ceased to be in full force and effect; provided, however, there shall be no Event of Default under this clause (k) if an RTD Termination Event has occurred and is continuing;

(l) Any Security Document ceases, except in accordance with its terms or as expressly permitted under the Financing Documents, to be effective to grant a perfected Security Interest on any material portion of the Project Collateral described therein, other than as a result of actions or failure to act by the Trustee or any other Secured Party;

(m) A Change of Control with respect to the Company will have occurred; and

(n) Any Insurance required under the Loan Agreement and the other Financing Documents is not, or ceases to be, in full force and effect at any time when it is required to be in effect and such failure continues for a period of ten (10) business days, unless such insurance is (prior to its cessation) replaced by insurance on substantially similar terms and in form and substance, and with insurers, on terms consistent with the Concession Agreement.

#### **Remedies on Event of Default**

Whenever any Event of Default referred to in the section "Events of Default" above will have occurred and be continuing, the Trustee, or the Issuer with the written consent of the Trustee, may, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Company and the Account Bank:

(a) Declare that all or any part of any amount outstanding under the Loan Agreement is (i) immediately due and payable, and/or (ii) payable on demand by the Trustee, and any such notice will take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Series 2020 Bonds are being accelerated, or if all of the Outstanding Series 2020 Bonds are being defeased under the terms of the Indenture or otherwise paid in full;

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Company during regular business hours of the Company;

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Loan Agreement;

(d) Pursuant to the terms of the Lockbox Account Agreement, direct the Account Bank to take any and all actions necessary to implement any available remedies with respect to the Lockbox Account Collateral under the Lockbox Account Agreement; or

(e) Pursuant to the terms of the Security Documents, take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Project Collateral under any of the Security Documents.

Any amounts collected pursuant to action taken under this section "Remedies on Event of Default" and the Security Documents paid to the Trustee will be applied in accordance with the provisions of the Indenture.

Nothing in the Loan Agreement prohibits the Issuer without the consent of the Trustee to pursue remedies specified in clause (c) if the Company fails to comply with Sections 4.01(b), 7.02 and 8.04 of the Loan Agreement.

#### **No Remedy Exclusive**

Subject to the Indenture and the Lockbox Account Agreement, no remedy under the Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and will be in addition to every other remedy given under the Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Potential Event of Default or Event of Default will impair any such right or power or will be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in the Loan Agreement, it will not be necessary to give any notice, other

than such notice as may be required by Law or in the Loan Agreement. Any such rights and remedies as are given to the Issuer under the Loan Agreement will also extend to the Owners of the Series 2020 Bonds, and the Trustee, subject to the provisions of the Indenture, will be entitled to the benefit of all covenants and agreements contained in the Loan Agreement, subject to the terms of the Security Documents and the Lockbox Account Agreement.

#### **Term of Agreement**

Except to the extent otherwise provided in the Loan Agreement, the Loan Agreement will be effective upon execution and delivery and will expire at such time as all of the Series 2020 Bonds and the fees and expenses of the Issuer and the Trustee will have been fully paid or provision made for such payments, whichever is later; *provided*, *however*, that the Loan Agreement may be terminated prior to such date pursuant to prepayment and redemption as provided in the Loan Agreement and defeasance as provided in the Indenture, but in no event before all of the obligations and duties of the Company under the Loan Agreement have been fully performed, including, without limitation, the payments of all costs and fees mandated hereunder.

#### Amendments, Changes and Modifications

Subsequent to the issuance of the Series 2020 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Loan Agreement, the Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

#### Limitation of Issuer's Liability

Nothing in the Loan Agreement, in the Indenture, in the Series 2020 Bonds or the Security Documents will constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State. The Series 2020 Bonds are special, limited obligations of the Issuer, payable solely from and secured solely by the Trust Estate and are not, and will not be deemed to constitute an obligation, moral or otherwise, of the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit nor the taxing power of the Issuer, the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest on the Series 2020 Bonds. The Owners of the Series 2020 Bonds may not look to any revenues of the Issuer for repayment of the Series 2020 Bonds, and the only sources of repayment of the Series 2020 Bonds are revenues provided by the Company to the Issuer pursuant to the Loan Agreement for the payment of the principal of, premium, if any, and interest on the Series 2020 Bonds, and the Series 2020 Bonds do not constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State. The payment of the Series 2020 Bonds will not be secured by any encumbrance, mortgage or other pledge of property of the Issuer, other than the Trust Estate. No property of the Issuer, subject to such exception, will be liable to be forfeited or taken in payment of the Series 2020 Bonds. Neither the members of the Board nor any persons executing the Series 2020 Bonds will be liable personally on the Series 2020 Bonds by reason of the issuance thereof.

No provision, covenant or agreement contained in the Loan Agreement, or any obligations imposed upon the Issuer in the Loan Agreement, or the breach thereof, will constitute an indebtedness or liability of the Issuer within the meaning of any State constitutional provision or statutory limitation or will constitute or give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in the Loan Agreement, the Issuer has not obligated itself except with respect to the application of the revenues, as hereinabove provided.

#### **Applicable Law**

The Loan Agreement will be governed by and construed in accordance with the laws of the State.

# APPENDIX J

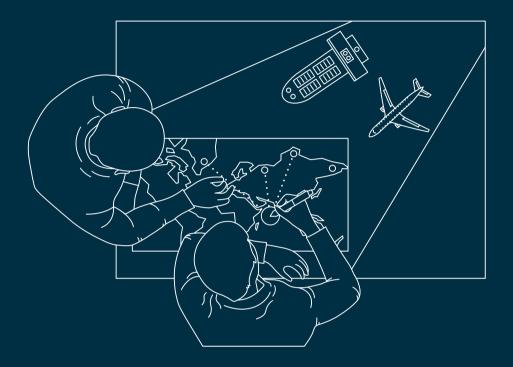
# **TECHNICAL ADVISOR REPORT**

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Delivering the confidence to invest in infrastructure



# **Denver Eagle P3**

Technical Advisor's Refinancing Report

#### DENVER EAGLE P3 TECHNICAL ADVISOR'S REFINANCING REPORT v3.0

- Version

3.0

- Prepared for

Potential Lenders to Denver Transit Partners, LLC,

- Issue Date

17th November 2020

# **IMPORTANT LEGAL NOTICE**

This is a technical report dealing with the contractual and construction aspects of the Project but does not provide a detailed review of all the technical aspects in relation to the Denver Eagle P3 (the Project). It is intended to highlight issues that are considered to have significant commercial implications in relation to the risk to which the prospective Lenders may be exposed.

This report, by its very nature, requires a certain amount of simplification of complex technical provisions. The detailed terms of any contractual documentation referred to in this report should be relied upon for their full effect and not any summaries of such terms that may be contained in this report.

The comments made throughout this report are selective and should not be taken as the only areas where the Lenders may be exposed to risk. The assessment of the risks associated with a project of this nature is complex and involves (inter alia) an understanding of the interaction of issues where specialist opinion (for example from the Lenders' legal advisers) is required.

Lenders should also satisfy themselves on the ability of the Client to perform in compliance with the Concession Agreement on the basis of the due diligence, reports and advice of the legal and other professional advisers in addition to the advice of Infrata Limited ("Infrata"). For example, reference should be made to insurance advisers in relation to insurance, which is not addressed in any detail in this report. The fact that a matter is not addressed in this report does not mean that it is not material.

This report and the opinions presented herein are subject to the following conditions and limitations:

- It has been prepared in accordance with the scope of Infrata's appointment with its client (the Appointment) and is subject to the terms of that Appointment.
- It is addressed to and for the sole and private and confidential use and reliance of Infrata's client, the Lenders (as defined in the Appointment) and/or any party to whom reliance has been expressly granted in writing by Infrata. Any such third-party reliance is subject to the terms of the Appointment including limitations of liability and rights of defence and limited to the purpose for which the report was prepared.
- Infrata accepts no duty, responsibility or liability (including in negligence) to any third party other than Infrata's client, the Lenders and/or any party to whom reliance has been expressly granted in writing by Infrata. Infrata disclaims all liability of any nature whatsoever (including in negligence) to any third party other than the Infrata's client, the Lenders and/or any party to whom reliance has been expressly granted in writing by Infrata
- No person other than Infrata's client, the Lenders and/or any party to whom reliance has been expressly permitted in writing by Infrata may copy (in whole or in part) use or rely on the contents of this report without the prior written permission of the Company

— Prepared By

LTA Team

- Reviewed by
  - Pedro A. Sousa
- Approved by
  - **Howard Fawcett**

Secretary of Infrata. Subject to the foregoing, any copying or use of this report

- (in whole or in part) by any party whatsoever shall be accompanied by or incorporate this legal notice at all times.
- Any advice, opinions, or recommendations within this report should be read and relied upon only in the context of the document as a whole. The contents of this report do not provide legal or tax advice or opinion.
- It has been compiled through a review of documents and information provided by the Project parties and a review of other publicly available reports and information. Infrata has assumed and relied upon the accuracy and completeness of all of the information provided to us (both written and oral) by the Client, other Project parties or was otherwise publicly available and Infrata has neither attempted independently to verify, nor assumed responsibility for verifying, such information. Infrata has relied upon the assurances of the Client that it is not aware of any facts that would make such information misleading.
- Certain statements made in this report that are not historical facts may constitute estimates, projections or other forward-looking statements. Whilst Infrata believes such forward-looking statements are reasonable and are based on reasonable assumptions as of the date of this report, such forward-looking statements by their nature involve risks and uncertainties that could cause actual results to differ materially from the results predicted. Infrata specifically does not guarantee or warrant any estimate or projection contained in our report.
- Infrata disclaims any undertaking or obligation to advise any person of any change in any matter affecting this report, which may come or be brought to our attention after the date of this report.
- This report has been prepared by Infrata. No individual is personally liable in connection with the preparation of this report. By receiving this report and acting on it, the client, the Lenders and/or any other person to whom reliance has been expressly granted accepts that no individual is personally liable whether in contract, tort, breach of statutory duty or otherwise.

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# **PROJECT SUMMARY**

PROJECT ELEMENT	PROJECT PARTIES	DESIGNATION IN THIS REPORT			
Description	The Denver Eagle Project is for the design, build, finance, operate and maintain (DBFOM) of three commuter rail lines in the Denver metro area, each of which are currently operating. The Project is a P3 Availability Payment based project. The total length of the Project is approximately 65 track miles and considers a fleet of 66 rolling stock vehicles, running along single ballast track between 4 terminals, 12 interim stations and a Commuter Rail Maintenance Facility (CRMF).				
Project Title	Denver Eagle Refinancing	The Project			
Concession Term	34.5 Years (from Financial Close)	The Term			
Revenue Service Commencement Certificate	East Corridor - September 6 <sup>th</sup> , 2018 Gold Line - March 31 <sup>st</sup> , 2019 North West Electrified Segment - October 20 <sup>th</sup> , 2017	-			
Final Completion Certificate	East Corridor – August 2 <sup>nd</sup> , 2019 Gold Line – November 16 <sup>th</sup> , 2020 North West Electrified Segment – May 4 <sup>th</sup> , 2018	-			
Authority	Denver's Regional Transport District	Regional Transportation District or ("RTD")			
Project Company	Denver Transit Partners	DTP or Concessionaire			
Equity Members	Aberdeen Standard Investments, John Laing, Fluor	Equity Members or Sponsors			
Equity Financial Advisor	Agentis Capital	Equity Financial Advisor			
Equity Legal Counsel	Orrick	Equity Legal Advisor			
Equity Insurance Brokers	Marsh	Equity Insurance Broker			
Lender(s)		Lender(s)			
Lender Insurance Advisor	Intech	LIA			
Lender Technical Advisor	Infrata Ltd	Infrata, LTA			
Lenders' Counsel	Nixon Peabody	LC			
Model Auditor	Mazars	Model Auditor			
D&B Contractor	Denver Transit Systems	D&B Contractor or "DTS"			
Rolling Stock Provider	Hyundai Rotem	Rolling Stock Supplier			
Operator	Denver Transit Operators	the Operator			

# **ACRONYMS AND DEFINITIONS**

ACRONYM	MEANING		
AABSP	Availability Adjusted Base Service Payment		
AASHTO	American Association of State Highway and Transportation Officials		
ACI	Alternate Concepts		
AF	Availability Factor		
ΑΡΤΑ	American Public Transportation Association		
AR	Availability Ratio		
AREMA	American Railway Engineering and Maintenance-of-Way Association		
BASP	Base Annual Service Payment		
BBR	Balfour Beatty Railway		
ССМ	Compliant Car Miles		
CDC	Centres for Disease Control and Prevention		
CFR	Code of Federal Regulations		
СМР	Construction Management Plan		
CPI	Consumer Price Index		
CRMF	Commuter Rail Maintenance Facility		
DBFOM	Design, Build, Finance, Operate and Maintain.		
DTC	Denver Transit Constructors		
DTO	Denver Transit Operators		
DTP	Denver Transit Partners		
DTS	Denver Transit Systems		
DUS	Denver Union Station		
EAGLE	East and Gold Line Enterprise		
EAM	Enterprise Asset Management		
EMUs	Electric Multiple Units		
EPs	Equator Principles		
EPAP	Equator Principles Action Plan		
EPFIs	Equator Principle Financial Institutions		
ESIA	Environmental and Social Impact Assessment		
ESMP	Environmental and Social Management Plan		
ESMS	Environmental and Social Management System		
FEIS	Final Environmental Impact Statement		
FCC	Final Completion Certificate		
FRA	Federal Railroad Administration		

IE	Independent Engineer
IEEE	Institute of Electrical and Electronics Engineers
IFC	International Finance Corporation
М	Materials Index
MoR	Modification Order Request
MUTCD	Manual on Uniform Traffic Control Devices
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NMS	Network Management System
NWR	Northwest Rail Line
000	Operations Control Centre
OCS	Overhead Catenary System
OECD	Organisation for Economic Cooperation and Development
OEM	Original Equipment Manufacturer
OL	Operation Lifesaver
OSM	Operations and Maintenance
OPEX	Operational Expenditure
ORR	Outer Ring Road
ΟΤΑ	On time Availability
PABs	Private Activity Bonds
PD	Performance Deductions
PTC	Positive Train Control
ROW	Right of Way
RSA	Rolling Stock Availability
RSCD	Revenue Service Commencement Dates
RSCC	Revenue Service Commencement Certificate
RSFIMP	Rolling Stock, Facility and Infrastructure Maintenance Plan
RTDC	Regional Transit District Commuter
RTD	Regional Transportation District
SCADA	Supervisory Control and Data Acquisition
SEA	Special Events Adjustment
SA	Station Availability
SCM	Scheduled Car Miles
SDH	Station Downtime Hours
SHP	Service Hour Price
SSH	Scheduled Station Hours
SP	Monthly Service Payment

SSPP	System Safety Program Plan
STO	Service Task Order
STOP	Service Task Order Programme
T&C	Testing & Commissioning
ТЕМТ	Total Extended Missed Times
TES	Traction Electrification System
TMDS	Train Management and Dispatch Systems
тмт	Total Missed Times
ΤΟΤΡ	Total On Time Performance
TPMS	Traction Power Management System
TPS	Traction Power Substations

# **EXECUTIVE SUMMARY**

Infrata Limited ("Infrata") has been appointed as LTA. The role of the LTA at this stage is to carry out due diligence on the Denver Eagle Project as part of the refinancing process.

**Project Parties & Experience:** The Equity Members of the Project are Aberdeen Standard (45%), John Laing (45%) and Fluor (10%). These are experienced equity members with a proven track record in similar projects in both North America and worldwide. Fluor and Balfour Beatty (i) each hold an equal share of the D&B Contractor (50%); and (ii) together with ACI, also form the Operator (each with 33%). All team members have established working relationships through their prior and successful experience working together in similar projects within the region. Considering the Project's current operational status, and factoring in the availability and performance to date, the LTA considers the Operator is capable of effectively performing the O&M services and complying with the technical specifications of the Concession Agreement.

**Project Contracts & Security Package:** A review has been undertaken of the principal contract documents, being the main provisions of the Concession Agreement, D&B Contract, O&M Agreement, Rolling Stock Agreement and Interface Agreement. The assignment of risks of responsibilities from DTP to the respective subcontractors is considered appropriate given the nature of the Project. The provisions for Relief Events, Force Majeure and Delay Events are generally consistent with the market standard and offer adequate protection to DTP. The LTA has undertaken a review of the principal components of the security package within the O&M Agreement, which are found to offer robust protection to DTP. The LTA has undertaken a worst-case analysis for the replacement of the Operator to assess whether the current security package is sufficient to cover the total additional costs that could be generated in such a scenario. The limitation of liability and size of the O&M letter of credit are found to be sufficient security components in a worst-case scenario. There is no prefunded Major Maintenance Reserve Account as the Renewal works are passed down to the Operator, but this is mitigated in the short term by the provision for a Renewal Works Letter of Credit (and for the funding of a Renewal Works Account by DTP for any difference against the required Renewal Works Letter of Credit Amount) and the O&M Letter of Credit, when Project conditions necessitate it.

**Construction Status & Legacy Issues:** The LTA has undertaken a virtual site visit of the Project based upon video and photo evidence provided by DTP in order to provide a general assessment of the state of the as-built infrastructure, taking into account the age of certain components, expected design life and O&M requirements. The structures, stations and track are all considered to be in generally good condition and fit for purpose based upon the assessment. There are 16 bridges which were retrofitted to comply with the relevant AREMA standard for rail bridges that have required an increased inspection regime and may generate additional costs such as for repainting at a later stage in the Concession. Any such costs are not expected to be significant and would be assumed by the Operator, as a settlement has already been made with the D&B Contractor through the Interface Agreement. All construction milestones, being the Revenue Service Commencement Certificates and Final Completion Certificates, have been achieved. In addition, the LTA notes there are no open quality logs, legacy issues or defects which is positive. In the event of these being identified, they would be the risk of the D&B Contractor or the Operator.

**Operations:** The Operator's organisational structure is considered suitable and contains the expected roles. It has demonstrated a high-level of performance against the O&M requirements since the beginning of the Project. There is a demand for qualified personnel in the Denver region and the Project has a relatively high staff turnover, but it is considered that the Operator continues to take appropriate measures to mitigate against this risk through its proactive approach to hiring of specialist staff. The reporting process with DTP and RTD is clear and in line with the expected frequency. The Operator has developed industry standard practices to ensure health and safety on the Project, particularly to minimise trespassing and other third-party risks. The Operator effectively implements an Enterprise Asset Management software ("EAMs") developed by Trapeze to register the status of the asset condition through a real time system of alerts and notifications, prompting maintenance activities and operational tasks. The EAMs also assists in the generation of reports for the evaluation of compliance against the O&M requirements, providing an integrated and

competent system for evaluating the Operator's ongoing performance. The effects of Covid-19 on the operations of the Project have not been considered significantly detrimental, the costs for additional measures are relatively minor and are expected to be recovered through a Relief Notice which is currently in process.

**Renewals:** Renewals are undertaken by the Operator, which has developed a series of maintenance and renewal plans in order to plan the renewal interventions by asset class. The LTA has reviewed the general assumptions for the main replacement interventions for rolling stock, track, stations and civils, communication systems, signalling and track controls, power distribution, bridges and structures and is satisfied that the frequency of intervention periods for the main components appear in line with federal and manufacturer recommendations. The total costs have been provided for these subcategories and although detail is not available, the overall expenditure profiles and frequencies follow the LTA's expectations for similar infrastructure. The Renewal Plan is revised annually as per the O&M Agreement, ensuring visibility of future interventions for the coming 5 years.

**Environmental:** The Project has reached the O&M Phase and has in place all necessary permits which were obtained during construction, having been procured on the basis of the Environmental Impact Statement ("EIS") in compliance with the policies and procedures under the National Environmental Policy Act ("NEPA"). There are no outstanding environmental contingencies or issues identified at the time of this report. An assessment has been undertaken against the Equator Principles and the Project is considered a Category B Project based upon its potential impacts and scope of mitigations which were implemented in the development of the technical solution. The Project is found to be generally compliant, although there is a compliance gap noted against Principles 4, given that DTP has ceased to report against its Sustainability Plan following instruction from RTD.

**Payment Mechanism:** The availability payment mechanism is similar to other commuter railway payment mechanism structures seen elsewhere, with an emphasis on maintaining a good user experience in respect of adhering to timetable, compliance with O&M standards and availability. The penalty regime captures the basic principles of availability and performance-based adjustments. During the first 4+years of operations, the Operator has been below the non-compliance points (STOP Points) threshold (barring one month at the very start of Operations) and therefore performance deductions have not been incurred by the Operator. Excluding the first year of operations which are not representative due to the ramp up period and close out of construction legacy issues, the Operator has obtained on average an Availability Factor above 100% which would imply that the Project has (on average) received bonuses (see Table 9-2). The LTA has undertaken its own probable, optimistic, pessimistic and termination trigger case deduction analyses, finding the payment mechanism and overall termination triggers within the O&M Agreement and Concession Agreement to be relatively benign.

**Project Costs:** The overall Opex budget is considered to be within a comparable range of other projects of similar scope and characteristics, although information was not available to make a more detailed assessment of the suitability of the budget in terms of the expected level of service and O&M requirements. The companies that form the Operator have recently achieved financial close on projects of similar scope and complexity, such that the LTA considers the costing information has been suitably market tested. During the years the Project has been in operation (i) the Operator Monthly Fee has been sufficient for the Operator to perform its obligations without requiring any budget modification; and (ii) the contingency allowance has not been used, with the costs so far performing within the budget. The Operator also has in place a robust approach to cost management and procurement which provides further comfort over the adequacy of the current budgets.

# **1 INTRODUCTION**

# **1.1 PURPOSE OF THE REPORT**

- 1.1.1 Denver Transit Partners ("DTP") and its Sponsor entities (Aberdeen, Fluor and John Laing) are seeking the refinancing of the Private Activity Bonds ("PABs") which were originally issued in 2010 to fund the Denver Eagle P3 Project (the "Project") in Denver, Colorado. The Project comprises a Concession Agreement executed between DTP and the procuring Authority, Regional Transportation District ("RTD") in 2010 to design, build, finance, operate and maintain ("DBFOM") three commuter lines in the Denver metro area.
- 1.1.2 Infrata Limited ("Infrata") has been appointed as LTA. The role of the LTA at this stage of the Project is to carry out due diligence on the Project in its current operational status as part of the refinancing process. Any queries regarding this report should be directed to the LTA via Jesus Ciurana jesus.ciurana@infrata.com and Howard Fawcett at howard.fawcett@infrata.com.

# **1.2 SCOPE OF THE REPORT**

- 1.2.1 The report contains analysis and LTA opinion of the following key areas (i) Organizational Structure and Capacity, (ii) Project Contracts and Security Package, (iii) Construction Status and Legacy Issues, (iv) Operational Capability and Performance, (v) Maintenance and Renewals, and (vi) Other risks and issues. Included within the foregoing the LTA has provided an analysis of the sufficiency of the O&M security package, the payment mechanism, applicable deductions and Project costs.
- **1.2.2** This report has been prepared on the basis of the information received prior to November 16, 2020, such that there may be discrepancies in the findings of this report against any information provided after such date.

### **1.3 LTA APPROACH**

- 1.3.1 The LTA approach mainly focuses on the Project technical risks and, in particular, those risks that could be material to the Lenders' interests and assesses the adequacy of the mitigating measures proposed by DTP. Where the LTA considers it necessary, specific issues are scrutinized in detail in order to achieve a better understanding of the key issues and DTP's responses to the risks they represent.
- 1.3.2 Infrata's previous experience of advising on rail projects is shown in the table below.

PROJECT NAME		JECT NAME PROJECT INFRATA ROLE VALUE	
	Purple Line LRT	\$ 2.2bn	LTA during due diligence to one of the bidding consortia. Role completed in 2015.
	Los Angeles International Airport Automated People Mover	\$ 1.7bn	LTA - Ongoing (construction monitoring)
	Finch West Light Rail Transit	\$ 700m	LTA - Ongoing (due diligence and construction monitoring)
*	Trillium Line LRT Extension	\$ 400m	LTA during bid process - completed in 2018
*	Edmonton Valley Line Southeast LRT	\$1.3bn	LTA during bid process - completed in 2015
	East Rail Maintenance Facility	\$300m	LTA during bid process - completed in 2015

Table 1-1 Summary of Infrata's relevant experience on rail projects

•	Confederation Line Extension – Stage 2	\$1.9bn	LTA during bid process - completed in 2018
	Hurontario LRT	\$3.5bn	TA during bid process - completed in 2019
*	Ottawa LRT	\$ 2.2bn	LTA during bid process - completed in 2012
0	Tel Aviv LRT Project	\$4.1bn	LTA - Ongoing (due diligence)
0	Jerusalem LRT Network Project	\$ 2.0bn	LTA role completed in 2019
0	Lima Metro LRT	\$4.6bn	LTA - Ongoing (construction monitoring)
*	Ferrocarril Central	\$ 1.1bn	LTA - Ongoing (construction monitoring)
×	Sydney LRT	AU\$ 2.1bn	LTA role completed in 2014
	High Speed 2	£ 31bn	Technical and Programme Advisor (ongoing)
=	Dutch High-Speed Line Zuid	€1.2bn	LTA role completed in 2011 (due diligence up to FC then Construction and Operations Monitoring).
	Sud Europe Atlantique (SEA) HSL	€7.8bn	LTA role completed in 2010
••	Contournement Nîmes- Montpellier (CNM) HSL	€1.3bn	LTA role completed in 2010
	Liege Tram Project	€400m	LTA - Ongoing (construction monitoring)
	Diabolo Rail Project	€540m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	Livan 1 LRT	€103m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	Brabo 1 LRT	€180m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
Source: Inf	Brabo 2 LRT rata	€230m	LTA role completed in 2014

# **1.4 LIMITATIONS AND EXCLUSIONS OF THE REPORT**

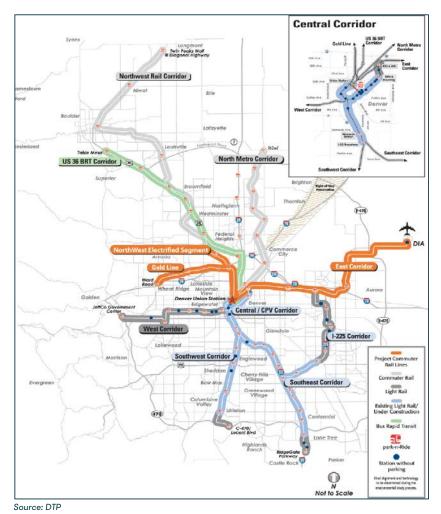
- 1.4.1 As a result of the global Covid-19 pandemic, the site visit programmed during the due diligence was rendered impossible due to the restrictions applied with respect to travel and normal business practice. The LTA has been working collaboratively with DTP and other relevant parties to continue to exercise its scope, including the revision and analysis of additional supporting Project information that has enabled, a "virtual site visit", in the absence of a first-hand inspection of the infrastructure.
- 1.4.2 The site visit is an important process in the LTA review of an infrastructure project as it provides the opportunity to observe, perceive and interpret significant details on site that enable for a good understanding as to the quality of the construction process and the control and checks made by the organisation. Therefore, it should be noted that for this report the LTA has had to rely on video links supplied by Operator, DTP, virtual walk throughs of the asset management system, as well as publicly available information and other media platforms, providing an appropriate substitute for the LTA visit under the current restrictions.
- 1.4.3 Nevertheless, it should be noted that the accuracy and veracity of the LTA's review, as always, is dependent on the quality of the documentation provided to it by the DTP, such that it maintains its disclaimer from any erroneous or misleading information. Discrepancies may exist between the documents reviewed at the time of submission of this report and their final version. Lenders are advised that variations between documents reviewed and their final version may have the potential to impact the LTA opinions described in this report.

# **2 PROJECT OVERVIEW AND ORGANIZATIONAL STRUCTURE**

# 2.1 PROJECT SUMMARY

2.1.1 The Project (Denver Eagle P3 Project) forms part of Denver's Regional Transport District ("RTD") transit programme, referred to as FasTracks, to expand rail and light rail and better connect the eight-county district. The following figure shows the planned FasTracks system:

Figure 2-1 Overall picture of the FasTrack system



- 2.1.2 The Project, also referred to as the East and Gold Line Enterprise ("Eagle") P3 Project, includes the design, build finance, operation and maintenance of (i) two complete commuter rail segments: the East Corridor and the Gold Line; (ii) an electrified portion of the Northwest Rail Line ("NWR") referred to as the Northwest Electrified Segment ("NWES") and (iii) a Commuter Rail Maintenance Facility ("CMRF"). The operational names of the commuter rail segments are: A Line (for the East Corridor); B Line (for the NWES); and G Line (for the Gold Line).
- 2.1.3 A map of the Project with the interconnections of the three commuter lines and the location of the CRMF is depicted in the following figure:

Figure 2-2 Eagle Project map



Source: DTP

- 2.1.4 In addition, the Project's scope included the right of way ("ROW") alignment required for the non-revenue movement of rolling stock between Denver Union Station ("DUS") and the CRMF; the procurement and installation of communication, signalling and traction electrification systems; the procurement of rolling stock for the Project; and the relocation of certain freight rail infrastructure.
- 2.1.5 It is worth highlighting that DTP effectively completed construction following the Revenue Service Commencement of the Gold Line in March 2019. Consequently, all scope elements associated with the construction component namely (i) infrastructure design, build and relocation; (ii) rolling stock procurement; and (iii) systems procurement and installation have already been completed. The last Final Completion Certificate ("FCC") has been achieved on November 16, 2020, officially signalling the end of the Construction Period. For more information on the O&M component of the scope, please refer to Sections 6 and 7 of this report.
- 2.1.6 The following table provides a summary of the three commuter lines of the Project and the CRMF main features.

LINE*	LENGTH / AREA	MAIN FEATURES***	STATIONS / LAYOUT			
East Corridor	23.3 miles (37.5km)	<ul> <li>8 stations;</li> <li>Max. Commuter Rail Operating speed 79mph;</li> <li>Dedicated rail corridor with sections of double track 77% and single track 23%;</li> <li>Service frequency: 15 min during peak travel period / 30 min during off-peak travel period;</li> <li>Time between start/end stops 37 min.</li> </ul>				
Gold Line**	11.2 miles (18km)	<ul> <li>8 stations;</li> <li>Max. Commuter Rail Operating speed 79mph;</li> <li>Shared rail corridor. First 4.17 miles (from DUS to Pecos Junction) shared track with the NWES. Next 7.03 miles (from Pecos Junction to Wheat Ridge Ward Station) dedicated track.;</li> </ul>	Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Constant Con			

Table 2-1 Summary of the Project's main features

		<ul> <li>Service frequency: 15 min during peak travel period / 30 min during off-peak travel period;</li> <li>Time between start/end stops 25 min.</li> </ul>
NWES	6.2 miles (10km)	<ul> <li>4 stations;</li> <li>Max. Commuter Rail Operating speed 79mph;</li> <li>Shared rail corridor. First 4.17 miles (from DUS to Pecos Junction) shared track with Gold Line. Next 2.03 miles (from Pecos Junction to Westminster Station) dedicated track;</li> <li>Service frequency: 30 min all day;</li> <li>Time between start/end stops 15 min.</li> </ul>
CRMF	24.3 acre (98,338 m2)	<ul> <li>Capacity to service 18 cars at a time; and house 66 cars (with potential to extend up to 80 cars);</li> <li>Includes 6 tracks;</li> <li>Includes: a vehicle maintenance shop, a parts warehouse, an Operations Control Centre ("OCC"), a rail storage yard, employee facilities, administrative offices, employee parking, train wash facilities, and other maintenance facilities.</li> <li>It will provide maintenance for four commuter rail lines (including the North Metro Line operated by RTD).</li> </ul>

\* East Corridor may also be referred to as A Line; NWES as to B Line; and Gold Line as to G Line.

\*\* As a result of the Covid-19 pandemic, from April 19<sup>th</sup>, 2020 the service frequency for the B Line changed to 60-minute headways; and the G Line to 30-minute headways. At the time of drafting this report, the schedule change remains in place. In turn, the A Line maintains the same headways.

\*\*\* The vehicles for the Project are Electric Multiple Units ("EMUs"). These are commuter rail vehicles that are designed to be compliant with FRA regulations and achieve higher operating speeds than light rail.

Source: LTA. Data: DTP

# **2.2 PROJECT ORGANISATIONAL STRUCTURE**

- 2.2.1 DTP has a team consisting of a combination of qualified developers, designers, contractors and operators in regional, national and global markets. The Equity Members comprise Aberdeen Standard, John Laing, and Fluor, holding 45%, 45% and 10% of the participations, respectively.
- 2.2.2 During the Construction Phase, Denver Transit Partners ("DTP") transferred design, build and commissioning as well as rolling stock procurement obligations and risks to Denver Transit Systems ("DTS" or the D&B Contractor) which consists of Fluor (50%) and Balfour Beatty (50%). In turn, DTS contracted the (i) design, build and commissioning obligations and risks to Denver Transit Constructors ("DTC") consisting of Fluor (40%), Balfour Beatty (30%) and Ames Construction (30%) and to the Design Leads (Fluor and HDR Global Design Consultants); whilst the (ii) rolling stock supply was subcontracted to Hyundai Rotem USA.

- 2.2.3 For the O&M Phase, DTP has transferred the O&M obligations and risks from the Concession Agreement to the Denver Transit Operators ("the Operator" or the Operator) which comprises Fluor (33%), Balfour Beatty (33%) and ACI (33%) under a back to back, fixed price, full term O&M Agreement.
- 2.2.4 The Project contractual organisation structure is shown in the figure below:

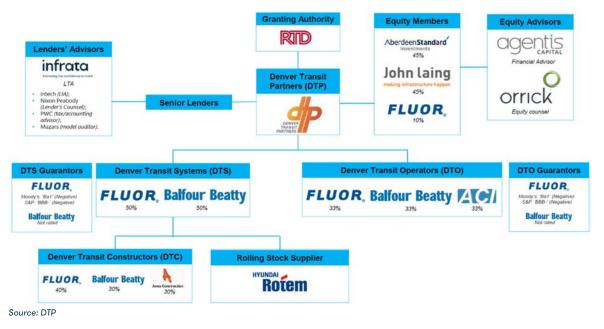


Figure 2-3 Project Contractual Organigramme

2.2.5 The LTA notes that, at the time of drafting this report, all of the Senior Lenders Advisors are appointed (e.g. Mazars as the model auditor, Intech as insurance advisor and Nixon Peabody as counsel.)

# 2.3 KEY PARTIES AND PRIOR EXPERIENCE

2.3.1 The following table provides a brief description of the key parties and summarises their previous capability and experience in projects of a similar nature both at a national and international level.

Table 2.3-	Keu narties	description	canability and	previous experience
10010 210	Rog parado	accomption,	oupubling and	a proviouo experience

ORGANISATION	ROLE	DESCRIPTION		RELEVANT PROJECTS			
			PROJECT	COUNTRY	YEAR	SIZE	STATUS
Aberdeen Standard	Equity Member (45%)	Aberdeen is the largest active asset manager in the UK and has over ~\$670bn of assets under management.	Carlsbad Desalination Plant Acquisition	USA	2019	Confidential	Operational
		Aberdeen's infrastructure arm manages over \$21bn across a global mid-market core and core+ infrastructure portfolio including utilities, transport and energy.	Canberra Light Rail	Australia	2016	CAPEX \$509.7m	Construction
			I-77 Express Lanes	USA	2015	CAPEX \$494m	Operational
			New Generation Rolling Stock	Australia	2014	CAPEX \$1.6bn	Construction
	Equity Member (45%)	John Laing is a UK-based firm that originates and invests in greenfield infrastructure, including active management of its projects through their construction and operations phases. As of its 2019 fiscal year end, John Laing had committed investments to over 150 infrastructure projects to date; and owned a portfolio of 48 infrastructure	PROJECT	COUNTRY	YEAR	SIZE	STATUS
			Hurontario LRT	Canada	2019	CAPEX \$1.5bn	Construction
John Laing making infrastructure happen			I-75 Modernization Segment 3	US	2018	\$630m	Construction
			MBTA Fare Collection System	US	2018	\$204m	Construction
			I-66 Managed Lanes	US	2017	CAPEX \$2.1bn	Construction

projects,	of	which	16	are	under
constructi	on a	nd 32 ar	e in	opera	ition.

77 Express Lanes	US	2015	CAPEX \$494m	Construction
+ Ultimate P3	US	2014	CAPEX \$2.3bn	Construction

Additional specific expertise in worldwide rail project development and management includes investments in:

- Sydney Light Rail Australia (operational Dec 2019); 0
- New Generation Rolling Stock Australia; 0
- Intercity Express Phase 1 UK; 0

1-7

<u>|-</u>L

0

Intercity Express Phase 2 - UK; 0

PROJECT	COUNTRY	YEAR	SIZE	STATUS
LAX Automated People Mover	USA	2018	CAPEX \$2.1bn	Construction
Green Line Light Rail Extension	USA	2017	CAPEX \$2.3bn	Construction
Exposition Line Light Rail Phase 1	USA	2006	Contract \$420m	Operational

Other transportation infrastructure experience by subsidiaries:

- The High-Speed Line Zuid, 62-mile project (The 0 Netherlands);
- I-495 Capitol Beltway Hot Lanes, 14-mile widening 0 freeway (USA);
- 0 A8 Autobahn Improvements, 23-mile widening freeway (Germany);
  - A59 Freeway Upgrade, upgrade of a 14.4km freeway (The Netherlands).

PROJECT	COUNTRY	YEAR	SIZE	STATUS
LAX Automated People Mover	USA	2018	CAPEX \$2.1bn	Construction
Remodelling London Bridge Station	UK	2011	Contract \$288m	Construction
Carlisle Northern Development Route	UK	2009	Contract \$197m	Operational
Exposition Line Light Rail Phase 1	USA	2006	Contract \$420m	Operational
Charlotte Blue Line	USA	2009 completion	\$100- 700m	Operational
West Rail Line (Denver, RTD project)	USA	2012 completion	\$50- 100m	Operational
Metro Gold Line East Side Light Rail Extension	USA	2018 completion	\$100- 700m	Operational

In addition, amongst the rail projects that Balfour Beatty has been involved with are:

- 0 Sacramento Regional Transit District Blue Line Extension - USA;
  - Greenbush Railroad Restoration;
- Alameda Corridor Maintenance; 0

he	PROJECT	COUNTRY	YEAR	SIZE	STATUS
of ns				CAPEX \$2.0bn	
er	Purple Line P3	USA	2016	Lifecycle Costs \$6.2bn	Construction
ns nd	Phoenix Light Rail	USA	2008	Confidential	Contract Ongoing
es.	Tren Urbano	Puerto Rico	2005	Confidential	Contract

Ongoing

Equity Member (10%) FLUOR (50%)

DTS - D&B Contractor the Operator - Operator (33%)

DTS - D&B Contractor

the Operator -

Operator (33%)

(50%)

the Operator -

Operator (33%)

history worldwide. Fluor designs, builds, operates and maintains facilities and assets for clients on six continents; focusing on the infrastructure energy, chemicals, government, industrial, mining and metals and power sectors

Fluor is one of the world's largest publicly traded engineering and construction firms, with a long-standing

Fluor had a \$6.9bn infrastructure backlog at the end of 2019.

Balfour Beatty is a leading international infrastructure group that finances, develops, builds and maintains

Balfour Beatty has over 26,000

employees worldwide operating across

three segments: infrastructure P3

investments, construction services, and infrastructure support services

maintenance

and

0

Systems

infrastructure.

(including

management services).

ACI

**Balfour Beatty** 

Alternate Concepts ("ACI") is one of th largest US-based private operators passenger rail systems, servicing train carrying over 35million passengers p annum.

ACI provides mass transit operation and maintenance services to public an private clients across the United State Among its services

		Massachusetts Contract Bay Commuter USA 2003 Confidential Complete (11 Roilroad years duration)
HYUNDAI Rolling Stock Supplier	Hyundai-Rotem USA is headquartered in Philadelphia and is the American subsidiary of the Hyundai Motor Group, whose name was changed to the current in December 2007. Rotem was formed when Hyundai took over the rolling stock manufacturing capabilities of Daewoo, making it the sole rolling stock manufacturer in South Korea. Hyundai-Rotem specialises in the manufacture of light rail vehicles, electric multiple vehicles ("EMUs"), diesel multiple units, high speed trains, and magnetically levitated vehicles.	<ul> <li>Seoul Metro Line 9 - 96 rail cars - South Korea;</li> <li>Incheon International Airport - 36 rail cars - South Korea;</li> <li>Rio de Janeiro Central - 80 rail cars - Brazil;</li> <li>Sao Paulo Metro Line 4 - 84 rail cars - Brazil;</li> </ul>

Source: LTA. Data: DTP

- 2.3.2 The Authority, RTD (Regional Transport District), was created in 1969 as a mass transportation planning agency for the Denver metropolitan area, and since 1974 is a public operating entity charged with the responsibility for developing, maintaining and operating a mass transportation system for the benefit of the inhabitants in its service area. RTD's service area encompasses portions of an eight-county region including all of Boulder, Broomfield, Denver and Jefferson counties, parts of Adams, Arapahoe and Douglas Counties, and a small portion of Weld County.
- 2.3.3 The Project has had Halcrow, then CH2M Hill (now Jacobs) as Independent Engineer ("IE") during the Construction Phase.

# **2.4 JOINT EXPERIENCE**

2.4.1 The following table compiles the recent projects on which the companies that form the Equity Members, DTP and the Operator have been jointly involved:

PROJECT	AWARD YEAR	STATUS	Aberdeen Standard	John Laing	FLUOR,	<b>Balfour Beatty</b>
I-77 Express Lanes (USA)	2015	Operational	Х	Х		
New Generation Rolling Stock (Australia)	2014	Operational	х	Х		
LAX Automated People Mover (USA)	2018	Construction			х	х
Exposition Line Light Rail Phase 1 (USA)	2006	Operational			х	Х
Source: LTA. Data: DTP						

Table 2-2 Equity Member DTP and the Operator recent joint experience

# **2.5 KEY PROJECT OPERATING CHALLENGES**

2.5.1 Based on the information, the LTA views the key challenges facing the Project during the O&M Phase could be those considered in the following table. These are key challenges that are assessed from a technical standpoint of delivering the O&M Services and do not necessarily equate to the key Project risk in terms of probability and potential impact. However, based upon its review, the LTA is satisfied that such challenges are presented with suitable mitigation measures by DTP and the Operator.

AREA	KEY OPERATING CHALLENGE	SOLUTION / MITIGANT	LTA COMMENT
Disparity	The indices of CPI, Labour	The application of a three-part	The LTA notes that to date, the
between		inflation solution hedges against	inflation indices have not presented
Inflation	considered within the	the risk of any major diversion in	any material deviation from the
indices and	payment mechanism may	the inflation of spare parts, labour	costs incurred in the O&M. In
Costs	present differences against	and general cost of living.	addition, there is a mechanism

#### Table 2-3 Key Project Operating Challenges

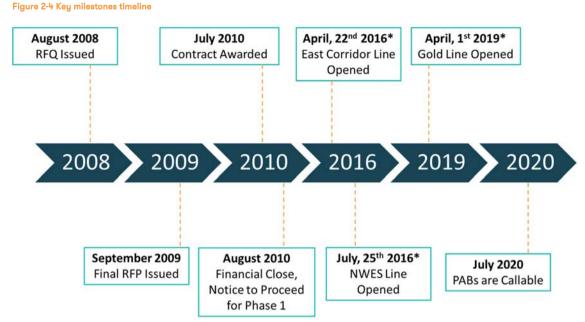
between Inflation indices and Costs	Index and Materials Index considered within the payment mechanism may present differences against actual costs over the life of the Project.	inflation solution of a three-part inflation solution hedges against the risk of any major diversion in the inflation of spare parts, labour and general cost of living.	inflation indices that to date, the inflation indices have not presented any material deviation from the costs incurred in the OSM. In addition, there is a mechanism within the Concession Agreement for modifying the inflation indices in the event that these are causing a material adverse effect.
Lack of Available Labour	Lack of experienced drivers or maintenance staff in the Denver wider area leads to a shortage of skilled staff within the Operator's organisation. In addition, a risk is posed by Covid-19 in terms of the availability of existing staff on payroll.	Operator continues to proactively hire and train staff, such as drivers, in order to anticipate any shortfalls. There is an agreed Covid-19 protocol that contemplates working from home where possible and additional cleaning. Headways of trains have also been increased in accordance with RTD. RTD has so far excused any possible deductions due to staff shortages as a result of Covid-19.	The Operator is currently taking appropriate measures to mitigate against this risk and has demonstrated an ability to maintain staffing levels during a period of peak skilled labour demand. However, should the demand continue to increase, the Operator may have to bear the risk of inflated salaries for specific roles.
Difficulty Sourcing EMU Spare Parts	Difficulties in obtaining the specific parts required for maintenance sourced outside of the USA, such as for the rolling stock.	The Operator has a well- established asset management system and fosters a proactive approach to procurement, using controls for ensuring that the correct inventory is maintained and that decisions are correctly assigned to those responsible. There are alternative secondary suppliers in the domestic market.	As is typical with other railway projects in the US, the process of procurement of spare parts from the overseas rolling stock suppliers is exposed to the risk of any supply chain disruption, particularly as a result of international trade relations.
O&M does not achieve handover condition	Routine O&M and Renewals programme might fall short of handover conditions, EMUs as an example.	The Renewal Plan betters Federal Railroad Administration ("FRA") guidance where possible and follows supplier recommendations. A high-level benchmark indicates that the OPEX has a generally adequate budget. In addition to the annual assessment, Sponsor initiated deep dive evaluations of the Renewal Plan are undertaken	The Operator demonstrates that it is following best practice in its approach to asset management and renewals, thus mitigating the risk of any unforeseen deterioration in asset condition. It is worth noting that the Operator retains the risk of handover and there are provisions for security against this risk within the O&M Agreement.

		every couple of years in order to assess the adequacy of the current programme.	
Failures of the PTC system	Failures such as GPS closure, combined with ineffective manufacturer support could disrupt operations	The Operator has shown awareness that PTC presents a potential weak point in its operations and is in continuous discussions with the supplier and other projects to try and seek betterment of the current system and its application. In addition, a proactive approach to monitoring of the system helps to mitigate any impacts presented by its failures.	The LTA is satisfied that the Operator has demonstrated due caution and consideration of the system and to date, there have not been any major issues that have disrupted the operations. The risk of failures of this system is an Operator risk.
Coordination with RTD and third-parties	Issues in communication with RTD and other third- party projects, such as river widening projects and sewer works below the track.	RTD, DTP and the Operator already have established channels of communication and clear responsibilities defined within the Concession Agreement and O&M Agreement.	The Project is already several years into operation and the risks presented by third parties and neighbouring projects appear to have been appropriately managed by all parties. In addition, DTP may have a case for a Relief Event in the case that another RTD Project interferes with the O&M.
Covid-19	DTP, the Operator and RTD must continue to coordinate effectively regarding the implementation of measures conceived to mitigate the risks of Covid- 19 in the Project. Several measures have been imposed already and the parties must continue to work towards a commercial solution.	Regular communication between the parties and a keen willingness to foster a collaborative effort against the risks posed by Covid- 19. There have been no changes to the payment mechanism as a result of increasing headways on some of the lines. The parties are working toward a Relief Notice that would provide compensation for additional costs related to enhanced cleaning measures.	The LTA considers that all parties continue to work collaboratively in the implementation of necessary measures that are also being implemented across the entire RTD network. The additional costs generated for 2020 (approximately \$26k per month) are relatively insignificant in the context of the overall O&M budget and it is expected these will be reimbursed through a Relief Notice in formulation.

#### Source: LTA

# 2.6 PROJECT MILESTONES AND KEY DATES

- 2.6.1 The concession period of the Project is 34.5 years, including construction. The construction of the Project began in August 2010, and the Project's last line was put in operation in April 2019, the remaining period for the O&M Phase is approximately 24.5 years (until December 2044).
- 2.6.2 DTP is currently seeking the refinancing of PABs, originally issued in 2010, to fund the Project. Based on the information provided by DTP, PABs are callable as of the end of July 2020. The following chart depicts the timeline of the Project's key milestones:



\* These dates correspond to the dates on which the Lines entered into Revenue Service. The Revenue Service Commencement Certificates were obtained at different dates, see below).

2.6.3 The construction schedule considered different Revenue Service Commencement Dates ("RSCD") for each line at which point a given Commuter Rail Project becomes operational, along with Final Completion dates. The following table provides the Revenue Service Commencement Certificate ("RSCC") dates, and the Final Completion Certificate ("FCC") dates for each line:

LINE	RSCC	FCC
East Corridor	September 6 <sup>th</sup> , 2018	August 2 <sup>nd</sup> , 2019
Gold Line	March 31 <sup>st</sup> , 2019	November 16 <sup>th</sup> , 2020
NWES	October 20 <sup>th</sup> , 2017	May 4 <sup>th</sup> , 2018

Table 2-4 Project's RSCC and FCC actual dates

Source: LTA. Data: DTP

# 2.7 LTA OPINION

- 2.7.1 The LTA notes the proven capability and experience of the Equity Partners, DTP, DTS and the Operator members on various successful P3 transactions including rail transport infrastructure projects in North America and globally.
- 2.7.2 The LTA acknowledges the vertical integration within the team with Fluor being represented at all levels; and Balfour Beatty at DTS, DTC and the Operator levels. This has allowed enhancement of the interface between DTP, DTS and the Operator, who also benefit from being co-located.
- 2.7.3 Both organisations Fluor and Balfour Beatty, which have successfully collaborated in the past developing and operating transit projects, have teamed up with a specialist organisation, ACl, strengthening the Operator's capabilities in the technical areas of railway systems maintenance, asset management and renewal.

- 2.7.4 Consequently, and bearing in mind the status of the Project (several years since the commencement of operations), the LTA considers the Operator is sufficiently capable of managing and directing the operations and maintenance.
- 2.7.5 It is worth mentioning that, in 2020, as is typical in the transition from construction to operations, DTP has experienced a number of changes in its management team which could present a potential risk to the communication lines between DTP and the Authority. However, the LTA notes that Doug Allen (current CEO) has adequate experience working with RTD and good working relationships which helps minimise such risk.
- 2.7.6 Moreover, the LTA considers that having the same parent companies in the D&B and O&M teams organizations has several benefits to lenders, including: (i) the reduction of potential interface risks between the partners; (ii) promoting a more collaborative approach ensuring that the operational impacts are minimised while meeting the O&M requirements. This open and collaborative approach was evident to the LTA during the kick-off meeting.
- 2.7.7 Lastly, the LTA recognises that RTD has also experienced a number of changes in its organisation over the previous months, although it is understood there are no immediate impacts that have been witnessed from DTP's perspective. RTD was considered to be relatively inexperienced as a procuring authority of P3 projects prior to Denver Eagle, but given the Project is at a mature stage and DTP and RTD have established a cooperative working relationship, there are no immediate concerns about the role of RTD.

# **3 PROJECT CONTRACTS**

# **3.1 INTRODUCTION**

3.1.1 This section of the report provides an overview of the main provisions of the Concession Agreement, presented as a risk matrix considering the relevant subcontracts and the pass down of risk. Focus is given to those provisions of the Concession Agreement which are relevant at the time of this report, considering that, the construction work is complete and the Project is in the O&M Phase following the obtention of the last FCC. Detail is also provided on the relevant provisions of the current subcontracts, being the D&C Contract, Rolling Stock Agreement, Interface Agreement and O&M Agreement, as well as the status of any material disputes.

# **3.2 CONCESSION AGREEMENT RISKS**

# **Risk Matrix**

3.2.1 The Concession Agreement was signed on 9 July 2010 between RTD and DTP. The following presents a summary of the main clauses and their risk transfer between both parties to the contract and DTP's respective subcontractors.

Table 3-1 Summary of the Main Clauses and Risk Transfer between Parties

CA CLAUSE	RISK	RTD	DTP	D&B CONTRACTOR	OPERATOR	
	Design and Construction					
2	<b>Design and Construction</b> DTP has passed down the responsibilities for the design and construction of the Project to the D&B Contractor.	<i>→</i>	÷	Х		
2	<b>Provision of Rolling Stock</b> DTP passed down the responsibilities for the procurement of the Rolling Stock Vehicles, which in turn is subcontracted to the Rolling Stock Provider, see Table 3.3-2 of this report.	<i>→</i>	÷	х		
28.2	Revenue Service Commencement The D&B Contractor assumes the back to back responsibilities for achieving Revenue Service Commencement (see Table 3.3-1) under the Concession Agreement for each Commuter Rail Project. The Operator is obliged to participate in the testing and commissioning process and to review all necessary documentation required in readiness for Revenue Service Commencement (see Table 3.3-4).	÷	÷	х	X	
28.4	<b>Final Completion</b> The D&B Contractor assumes the back to back responsibilities for achieving Final Completion (see Table 3.3-1) under the Concession Agreement for each Commuter Rail Project. The Operator is responsible for two of the Final Completion Requirements, as detailed in (see Table 3.3-4).	÷	÷	х	x	

Operations and Maintenance					
29.1	<b>Operations &amp; Maintenance</b> O&M responsibilities are passed down to the Operator.	<i>→</i>	$\rightarrow$		х
29.5	<b>Maintenance and Repairs</b> The responsibility for maintenance and repairs is assumed by the Operator.	÷	$\rightarrow$		х
29.6	<b>Emergencies and Disruptions</b> DTP and the Operator are required to respond to and mitigate the effects of any emergency. RTD may immediately intervene in order to prevent or eliminate any serious risk arising from any emergency.	÷	х	х	x
29.13	<b>Operation of Fare System Equipment</b> RTD shall be responsible for the supply, installation, testing, operation and maintenance of the Fare System Equipment and for the collection of the fares.	x			
29.14	<b>Operating Reports</b> The Operator shall deliver the Daily Operating Report, Monthly Operating Report, Quarterly Operating Report and Yearly Operating Report.	÷	÷		х
29.15	<b>Electrical Energy</b> The Operator shall pay for all Electrical Energy necessary for the performance of the services and for the operations and maintenance of the Commuter Rail Projects, with the exception of the Traction Power, which shall be paid for by RTD.	x	÷		X
29.20	Heavy Rail Movements The Operator shall be responsible for the dispatch of the Heavy Rail Movements (in Denver Union Station terminal area).	÷	÷		X
29.21	Interface with Heavy Rail Operators The Operator shall operate and maintain DTP related Components, in accordance with the Railroad Agreements.	÷	÷		x
31	Rolling StockRTD may request the provision of additional Rolling Stock (the Rolling Stock Option Cars), which shall only be procured by DTP as part of DTP Related Services. The provision of additional cars would then be treated as a scope change order under the D&B Contract.The Rolling Stock Vehicles are to be operated and maintained by the Operator.Any future Rolling Stock Vehicles would be procured as a Change Order.	x	х	Х	X
37	<b>Change in Law</b> RTD shall pay to DTP the incurred costs resulting from a change in law to the extent that it negatively impacts the Project.	х			
28	Relief Events	х			

Relief Events (see Appendix B of this report) should be mitigated against by DTP and Operator, with both parties able to claim for additional incurred costs and impacts to the Availability Ratio or Performance Deductions from RTD.

#### **Environmental and Permits**

RTD is liable for any RTD retained environmental work. DTP would be responsible for non-Operator caused hazardous materials and the Operator is

responsible for the environmental conditions and clean up, to the extent this is considered reasonable, costs will be reimbursed by RTD.

#### **Force Majeure**

39

40

44

13, 17

Force Majeure events shall relieve DTP from its contractual liabilities, but it shall be required to cover the costs of such event provided this does not correspond to an uninsurable risk, in which case the cost may be covered by RTD. The Operator will be excused from any adjustments to the Availability Ratio or Performance Deductions in the case that a Force Majeure event exists.

#### **Damage to DTP Operated Components**

The Operator shall prepare and implement a Restoration Plan in the event that damage to the infrastructure is incurred in excess of USD 5m or the amount that would otherwise be covered by insurance.

#### Handover

The Operator is responsible for ensuring that the infrastructure is compliant with the respective service life and O&M requirements upon Handover.

The handover process requires the collective involvement of RTD, DTP and the Operator.

Source: Concession Agreement, O&M Agreement and D&B Contract

### **Force Majeure**

3.2.2 The Force Majeure Events defined in the Concession Agreement are shown in the following table. Force Majeure, as is defined in the Concession Agreement, will provide relief against contractual obligations but will not allow for the claiming of costs associated with such event towards either RTD or DTP.

**Table 3-2 Force Majeure Events** 

#### CL EVENT

act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, in each case involving, a) imminently threatened within or directly affecting the United States of America, provided that where only threatened, the actions taken by the Concessionaire must be reasonable in view of and proportionate to the threat;

the occurrence of force majeure under any Third Party Agreement or action (including a Change in Law) taken by any Project Third Party (or their respective agents or contractors) or any other Relevant Authority, including the Transportation Security Administration, the United States Department of Homeland Security, FRA, FTA or Federal b) Aviation Administration (or any successor entity of the foregoing agencies) in response to a threat to, or event affecting, the public health, safety, security or the Environment, in each case, the effect of which is to suspend, delay

revolution, riot, insurrection, civil commotion, sabotage or terrorism, provided that where only threatened, the actions c) taken by the Concessionaire must be reasonable in view of and proportionate to the threat;

or disrupt the performance by the Concessionaire of any of its obligations under this Agreement

X	Х	Х
x	Х	
÷	÷	Х
÷	<i>→</i>	х

d) strikes or industrial action unless they are solely restricted to employees of the Concessionaire, any Project Contractor and/or their respective Subcontractors;

nuclear explosion, radioactive or chemical contamination or ionizing radiation or electromagnetic pulse, biological contamination of any Site, unless the source or cause of the explosion, contamination, radiation, pulse or hazardous

e) contamination of any Site, unless the source of cause of the explosion, contamination, radiation, pulse of hazardous material is brought to or near such Site by the Concessionaire, the Design/Build Contractor or any Design/Build Subcontractor or any of their employees, servants, agents or consultants;

fire, explosion, sonic boom, storm, flood, earthquakes, landslide or severe weather but only where it causes material and unavoidable damage to all or any material part of any Site, the Work (including materials procured for use therein) or the Concessionaire operated Components or otherwise causes the Concessionaire-operated Components to be unusable or substantially unusable;

g) any failure, shortage, or outage of power supplied by the Power Network;

a legally imposed quarantine, against which the Affected Party (as defined below) could not reasonably have been **h)** expected to take precautions, and which prevents or delays the performance by the Affected Party of its obligations under this Agreement;

i) embargo or trade sanctions having an adverse effect on the performance of this Agreement;

any other event outside the reasonable control of the Affected Party, and which was not reasonably foreseeable by the Affected Party as at the date of this Agreement, where such event materially and unavoidably prevents or delays the Affected Party from performing any of its obligations under this Agreement; provided that:

(i) the term "reasonably foreseeable" means any event or circumstance or category of events or circumstances specifically described in this Agreement or which the Affected Party knew, or should have known, may occur, and which is of a type that a construction contractor or operator, acting in accordance with Good Industry Practice and this Agreement, would have taken steps to avoid or protect itself against; and

(ii) an event shall not qualify as a Force Majeure Event under this Section 39.1(j)

where:

- (A) such event is a Force Majeure Event under paragraphs (a) to (i) above; or i)
  - (B) such event is an event of the same type as an event which is classified as a Relief Event,
    - but in each case only to the extent that:

(I) the same is outside of the Concessionaire's control and does not arise from and is not contributed to by any breach by the Concessionaire of its obligations under this Agreement or the other Project Agreements or any other neglect, default, act or omission of the Concessionaire;

(II) such events or circumstances have arisen notwithstanding the Concessionaire complying with its obligations under this Agreement, and in accordance with its obligations under Attachment 9 (Project and Construction Management) or the O&M Submittals;

(III) the Concessionaire has at all times complied with its obligations under Section 39.7 (Mitigation in Case of a Force Majeure Event) with respect to minimizing and/or mitigating the consequences of the Force Majeure Event.

Source: Concession Agreement

3.2.3 The Force Majeure events in the O&M Agreement are the same as those in the Concession Agreement, with the exception of j), for which the provisions (I) to (III) are not applied, given that (I) and (II) are applied to all Force Majeure events in the O&M Agreement under clause 12.1. However, clause (III), which is applied to all Force Majeure events in the O&M Agreement, is slightly more prescriptive in the Concession Agreement, which is not considered to be a material issue.

### **Delay Events**

3.2.4 DTP (and the Operator) shall not be responsible for delays and revenue service interruptions due to the circumstances set out in the table in Appendix B of this report, provided that any such disruption which is not rectified within the time stipulated in, or in a manner consistent with the approved Operating Plan. Such events apply to both the O&M Agreement and the Concession Agreement. These Delay Event Exclusions shall be taken into account in the calculation of the Availability Ratio (see Section 9 of this report).

## **Relief Event**

3.2.5 Relief Events are provided in Appendix B of this report. Relief Events will provide DTP, and therefore the Operator, the right to claim for delays and additional costs should any Relief Event occur.

### **3.3 MAIN PROJECT CONTRACTS**

### **D&C Contract**

3.3.1 The D&C Contract was signed on July 9, 2010 between DTP and DTS (the D&B Contractor) and has since been subject to two amendments on July 22, 2010 and August 6, 2010 respectively. At the time of this report, Revenue Service Commencement and Final Completion have been achieved for all lines. As such, the LTA has focused its review of the D&C Contract on those clauses which are considered of material interest at the time of this report.

Table 3-3 D&C Contract Main Relevant Provisions

AREA	CL.	DESCRIPTION	
Back to Back	2.1	Unless otherwise expressly provided in the D&C Contract, the D&B Contractor shall assume and comply with DTP's obligations set forth in the Concession Agreement on a back to back basis.	
Payment	4.1	Fixed price, lump sum contract equal to USD 1,269,196,983 (USD 2010), to be paid in monthly instalments on the earned value of work.	
Revenue Service Commencement	6.4	The D&B Contractor is obliged to use reasonable efforts to ensure that the RSCD (Revenue Service Commencement Date) for each Commuter Rail Project occurs on or before the Revenue Service Target Date and obtain the Revenue Service Commencement Certificate on or before that Revenue Service Deadline Date for each Commuter Rail Project. Revenue Service Commencement is achieved when the Project reaches the Revenue Service Commencement Conditions, which include, the completion of the Commuter Rail Project (with the exception of the Punch List), the successful carrying out of Verification and System Performance Demonstrations, delivery of all Submittals, full implementation of the relevant Plans, as evidenced through the signing of the Revenue Service Commencement Certificate by the Independent Engineer.	
Final Completion	2.1.38	The D&B Contractor is obliged to use reasonable efforts to ensure that the Final Completion Certificate for each Commuter Rail Project is on or before the date falling six months after the respective Revenue Service Commencement Date and to achieve Final Completion for a Commuter Rail Service by the Final Completion Deadline Date, evidenced through the issuance of the Final Completion Certificate by the Independent Engineer. Within the Concession Agreement, the Final Completion Deadline date is 24 months after the final Revenue Service Commencement Date (30 March 2021). Within the D&C Contract, this is 15 months, providing a buffer of 9 months, as shown below (30 June 2020). The Revenue Service Commencement Date for each Commuter Rail Network fail Project must be obtained by the Final Completion Deadline, being 24 months (Revenue Service Commencement Date Date:	
		Revenue Service Commencement Dates       Revenue Service Deadline Date       Final Completion Date       Final Completion Date         Final Completion is achieved for a given Commuter Rail Service upon compliance with the Final Completion Requirements, which include the following:       Image: Commencement Certificate has been issued:	

		<ul> <li>The Availability Ratio on the applicable Commuter Rail Service is an average of at least 94% for a period of six consecutive months commencing after the Revenue Service Commencement Date;</li> <li>The Availability Ratio for such Commuter Rail Service has not fallen below 80% in more than one calendar month (or below 80% in two calendar months for a single event of 30 days);</li> <li>All Contract Data relating to the commencement of operation and maintenance of such Commuter Rail Project and Commuter Rail Service has been submitted to or approved by, RTD and the Project Third Parties;</li> <li>The System Performance Demonstration Reports for such Commuter Rail Service have been completed by DTP;</li> <li>The Final Revision System T&amp;C Plan has been accepted by RTD;</li> <li>All of the Punch List Items set out in the schedule to the Revenue Service Commencement Certificate for such Commuter Rail Project tave been carried out;</li> <li>All demobilization from the Relevant Sites is complete.</li> <li>the Phase 2 Effective Date does not occur on or before the Phase 2 Condition Precedent Satisfaction Date, with respect to the Final Completion Certificate for the East Corridor Project DTP shall have delivered all Final Design Submittals to RTD;</li> <li>With respect to the Final Completion Certificate only, DTP has submitted the As-Built schedule to RTD, has certified to RTD in writing that no amounts remain outstanding to the D&amp;B Contractor or Rolling Stock Supplier and all conditions for the return of Construction Security have occurred.</li> </ul>
Security Package	9.1	The total liability of the D&B Contractor shall not exceed an amount equal to 45% of the Contract Sum, considering the standard exclusions. No later than last Final Completion Date to occur, the D&B Contractor shall procure and maintain a warranty bond equal to 10% of the contract sum until the later of the expiration of the last Warranty Period, or the resolution of any open warranty claims made prior to the expiration of the last Warranty Period. The warranty bond is currently in place. A form of guarantee shall be provided in favour of DTP for security of all obligations under the D&B Contract by the equity partners Balfour Beatty and Fluor.
Delay Damages	7.2	The D&B Contractor would assume the responsibility for any delays to the Revenue Service Commencement and would pay to DTP Delay Damages Rate in case of such delay. The D&B Contractor is also liable for the Concession Agreement Liquidated Damages, being the Rolling Stock Option Liquidated Damages, in the case that RTD requests additional Rolling Stock Option Cars and the Early Work Liquidated Damages.
Warranty	10.2	The D&B Contractor warrants to DTP and RTD that: i) the design of the Project shall comply with all the requirements of the D&B Contract, the Concession Agreement and the Project Requirements, ii) all work shall be in conformance with good industry practice and the applicable requirements, iii) the rolling stock shall be in conformance with the applicable requirements, and iv) the final as-built drawings and documentation shall be accurate, complete and comply with the Contract Documents. The warranty period is for 18 months after the Revenue Service Commencement Date for each Commuter Rail Project. As such, the final Warranty Period will expire on 30 September 2020, following the expiration of such period for the Gold Line. Any Warranty Period shall be extended for an additional 12 months from the date of repair or replacement solely with respect to any portion of the work that is replaced during the Warranty Period. Any Warranty Periods from third-party suppliers, manufacturers or Subcontractors shall be passed through to DTP.
Defects / Latent Defects	-	See Interface Agreement below.
Source: D&B Contract		

# **Rolling Stock Supply Contract**

- 3.3.2 The Rolling Stock Supply Contract was entered into on June 29, 2010 between DTS and Hyundai Rotem USA Corporation (the Rolling Stock Supplier). Since the beginning of the Project, 66 vehicles have been procured under the agreement. The vehicles were covered by a 3-year general warranty. That warranty term has now expired for all but 1 of the vehicles, for which the general warranty will expire in January of 2021. The vehicles are also covered by a 15-year Car Structure and Frame warranty, which remains in effect for all the vehicles.
- 3.3.3 Responsibility for the on-going maintenance of the fleet has been contractually passed down to the Operator. Although the rolling stock warranties are assigned to DTP, rather than the Operator, clause 11.2 of the O&M Agreement permits that the Operator have the prior right to enforce the warranties of all vendors and manufacturers assigned to the Concessionaire. This effectively allows the Operator to assume direct responsibility for enforcing the remaining warranty obligations in order to carry out its maintenance obligations.
- 3.3.4 There have been no material disputes notified under the Rolling Stock Supply Contract. It should also be noted that any minor warranty repairs were undertaken by the Operator, once agreed with Hyundai Rotem, during the 3-year warranty period and charged back to the D&B Contractor through the Interface Agreement.

#### 3.3.5 The following table presents a review of the main provisions as they relate to DTP.

Table 3-4 Rolling Stock Supply Provisions

CLAUSE	DESCRIPTION	
Scope	The scope includes the delivery of rolling stock vehicles complete with onboard systems that meet the requirements of this contract, including design, build, delivery, testing and commissioning. The rolling stock supplier shall be responsible for supporting the D&B Contractor with its overall systems integration and testing with the other components of the infrastructure.	
Payment	The contract price is based upon a lump sum amount for a base order of 50 vehicles, subject to any agreed changes to the base order, to be agreed upon between the parties via a number of methods including lump sum amounts and also through unit price and methods of measurement. The total price has not been disclosed to the LTA. Payments for the rolling stock vehicles are made on the basis of milestones, including the initial	
	and final testing for the vehicles and other deliverables, such as design deliveries and calculations.	
Revenue Service Commencement and Final Completion	The Rolling Stock Supplier assumes the back to back responsibilities of the Concession Agreement with respect to the achievement of the Revenue Service Commencement and Final Completion by their respective dates, as shown in Table 3.3-1.	
Warranty	<ul> <li>A warranty is provided for the compliance against all relevant technical requirements until the end of the following periods: <ul> <li>Car Structure and Frame - 15 years</li> <li>Any other works - 3 years from final acceptance of the vehicle.</li> <li>To be extended by any period wherein the work is not available for use due to defects during the warranty period.</li> <li>Design and Engineering, labour, equipment and materials to replace or remedy defects shall be warranted for a period of 18 months from the date of completion of the correction.</li> </ul> </li> <li>Defects will be notified to the Rolling Stock Supplier and in the case that fails to rectify such defects in a timely manner, the D&amp;B Contractor will retain the right to undertake such reparative work necessary at the cost of the Rolling Stock Supplier.</li> <li>In addition, if any single failure or cumulative failures occur across 10% of a specific item or the fleet itself then the Rolling Stock Supplier will redesign and replace that specific item across the entire fleet.</li> </ul>	

Source: Rolling Stock Supply Agreement.

### **Interface Agreement**

3.3.6 The D&B Contractor and Operator have signed an Interface Agreement on 9 July 2010, the main provisions of which are shown in the following table.

### 3.3.7 There are no known disputes under the Interface Agreement.

#### Table 3-5 Interface Agreement main provisions

AREA	CL.	DESCRIPTION		
General Principles	2.1	Each Contractor agrees to effectively cooperate with the other Contractor in the performance of its respective obligations under the D&B Contract and the O&M Agreement. The parties shall establish a Coordination Committee to coordinate their respective efforts and activities.		
Design Review	3.2	There is an established process for design review, such that the Operator shall make all comments and provide all feedback on the design documents as per time periods set out in the D&B Contract. The process allows for the implementation of any of the Operator's comments in good faith.		
		Until the end of the Warranty Period under the D&B Contract, or upon discovering a D&B Contractor Defect or a condition that could likely become a D&B Contractor Defect, the Operator shall notify DTP, the D&B Warrantor (the Warrantor responsible for such D&B Defect) and the D&B Contractor.		
Defects	5.1	In the event that such D&B Contractor Defect results in an emergency with immediate need of rectification for safety reasons, the Operator shall require the D&B Warrantor to take all corrective measures necessary, or if said party is unable to do so promptly, may self-perform or employ a third party to attend to such defect at the cost of the D&B Warrantor.		
Derects	0.1	In the event that such D&B Contractor Defect does not result in an emergency as described above, the Operator shall request that the D&B Warrantor (or D&B Contractor) proceed to immediately correct the necessary repair and correction. In the event that, neither has proceeded to undertake such necessary work within 10 business days, the Operator may proceed to take all corrective measures and hold the D&B Contractor liable for all costs.		
		In the event that, the D&B Contractor disputes the nature of the D&B Contractor's liability with respect to any alleged D&B Contractor Defect, it may be treated through the dispute resolution procedure.		
Indemnity	8.2 8.3	Both the D&B Contractor and the Operator shall indemnify and hold the other harmless for the losses and damages associated with their own respective work derived from the D&B Contract and the O&M Agreement.		
Source: Interf	Source: Interface Agreement			

# **O&M Agreement**

3.3.8 The LTA has reviewed the Operation and Maintenance Agreement dated July 9, 2010 and its amendment dated July 22, 2010. The following table presents the main clauses considered of interest to potential financiers from a technical perspective.

CLAUSE	CLAUSE	DESCRIPTION
Term	2.1	The term of the contract is from signing until the Concession Expiry Date.
Back to back principle	3.1	Except as otherwise expressly provided in the O&M Agreement, Operator shall assume and comply with all obligations and liabilities set forth in the Concession Agreement to the extent that they relate to the Services on a back-to-back basis
		The scope of the Services to be performed by the Operator comprises meeting the O&M Specifications through the operations, maintenance and renewal work. The Operator shall assume and comply with all obligations and liabilities set forth in the Concession Agreement to the extent that they relate to the Services on a back to back basis.
Scope of Services	Article 3	Prior to the Operations Notice to Proceed, the Operator shall provide certain pre- operations services in coordination with DTP and the D&B Contractor, such as design reviews, the preparation of the relevant O&M plans, operation of trains for testing and commissioning, hiring and training, participation in testing and commissioning certification, the provision of specific materials and equipment, dispatching of rail movements, track inspections, CMRF maintenance, maintenance of rolling stock and support of rolling stock contract and reporting.

Table 3-6 O&M Agreement Review

		Following the Operations Notice to Proceed for each line within the Project, the Operator shall provide the Commuter Rail Service and certain associated operations and maintenance services for each line continuing through the End Date.
		The Operator shall have no authority in relation to DTP Reserved Services, being the procurement of Rolling Stock Option cars.
		The Operator shall provide all resources necessary to assist with and participate in the process of Testing and Commissioning for each Commuter Rail Project, including reviewing any associated plans known as the Commissioning Documents prepared by the D&B Contractor. Operator shall be fully responsible for achievement of the following requirements prior to the Final Completion Date:
Mobilization and Start up	3.3	<ul> <li>The Availability Ratio on the applicable Commuter Rail Service is an average of at least 94% for a period of six consecutive months commencing after the Revenue Service Commencement Date for such Commuter Rail Project, and ending prior to the Final Completion Deadline Date;</li> <li>The Availability Ratio for such Commuter Rail Service has not fallen below 80% in more than one calendar month or a single continuous event of less than 30 days which causes the Availability Ratio to fall below 80% in 2 such calendar months within the same period as above.</li> <li>The Operator shall be excused from a failure to achieve the above in the event that this is attributable to the D&amp;B Contractor.</li> </ul>
		The Operator is entitled to the Monthly Operator's Fee in return for the full and complete performance of the Services, calculated in accordance with Exhibit I of the O&M Agreement. The undisputed portion of the Monthly Operator's Fee shall be paid by DTP to the Operator once it has received the corresponding Monthly Service Payment following receipt of the Operator's Invoice.
Contract Payment	5.2, 5.3 Exhibit A	The Operator shall be entitled to payment for the performance of the Renewal Work in accordance with the Renewal Work Budget and Schedule once DTP has received Service Payments for the corresponding Renewal Work. In the event that Renewal Work Payments are not sufficient to cover the Renewal Work costs as incurred, or the Renewal Work is performed at times other than scheduled in the Renewal Work Budget and Schedule, the Operator shall be liable to provide all necessary capital and will not be entitled to additional costs from DTP.
		By no later than 60 days before the end of each calendar year, the Operator shall provide the Forecast Renewal Work Schedule for the next 5 years. In the event that the LTA is of the view that i) the timing of such Renewal Work will not allow the Operator to comply with its obligations or ii) it is unlikely that the Operator will be able to perform such Renewal Work within the budget set forth therein, the Operator is obliged to revise the Forecast Renewal Work schedule to incorporate such changes to the extent that it is agreed.
		Any and all Monthly Operator's Fees and Renewal Work payments shall be subject to any deductions, set-off or adjustments.
Electrical Energy	3.12	The Operator shall i) pay for all electrical cost associated with the performance of the services and the operations and maintenance of the rolling stock, except the for the costs of Traction Power and ii) coordinate and interface with the Power Network regarding the ongoing supply of electrical power. The Operator shall submit a monthly Traction power Usage Report.
Performance, Deductions and STOP Points	O&M Specifications	The Operator assumes responsibility for STOP points and performance deductions for failure to comply with the O&M specifications and availability criteria. Please see Section 9 of this report for further details.
Remedial Action Plan	3.7	The Operator is obliged to take onboard any recommendations made by DTP in the event that: (x) the Availability Ratio of any Commuter Rail Services is less than an average of 95% for four or more months of any rolling six-month period or (y) the Performance Deduction Percentage exceeds an average of 2.0% of the Adjustable Base Service Payment for four or more months of any rolling six month period or (z) a Persistent Condition exists.

		DTP may request a Remedial Plan from the Operator in the event that (x) the Availability Ratio of any Commuter Rail Services is less than an average of 90% for four or more months of any rolling six-month period or (y) the Performance Deduction Percentage exceeds an average of 2.3% of the Adjustable Base Service Payment for four or more months of any rolling six month period. Such plan shall set out the actions that will be taken to remedy any failure in performance and minimize the impact on passengers at its own cost. Once the Remedial Plan has been approved by DTP, the Operator will submit to the LTA for its approval and shall then implement and adhere to such plan diligently. The Operator shall comply with all of DTP's obligations with respect to STOs set forth in Section 3 of the O&M Specifications, including preparation and implementation of any Remedial Action Plan (as defined in the O&M Specifications), which may require utilization of additional shifts, manpower, overtime and resequencing of activities at the sole cost of the Operator. The Operator shall present such Remedial Action Plan for DTP's approval prior to submitting the same for RTD's approval.
Inspections and Audits	3.9	Operator shall perform all inspections, surveillance and maintenance of traffic services that are required for the performance of the Services on a timely basis. On the basis of such detailed inspections performed at regular intervals, the Operator shall keep DTP informed on an ongoing basis of the performance and quality of such services, providing written reports of any deficiencies revealed and measures proposed to remedy such deficiencies. DTP is entitled to make recommendations to the Operator for the purpose of remedying any deficiency. DTP, RTD and the Independent Engineer may participate in any inspection.
Heavy Rail Operators	3.17, 3.18	Operator shall be responsible for dispatch of all Heavy Rail Movements (in and out of Denver Union Station). Operator shall operate and maintain DTP-operated Components in accordance with the requirements of the Railroad Agreements and without impairing or disrupting the operations of any Heavy Rail Operator, provided such interruption has not already been agreed with the relevant Heavy Rail Operator. The Operator shall indemnify RTD and DTP for any losses or claims arising out of any impairment or disruption to the activities of any Heavy Rail Operator.
Permitting	3.20	Operator shall procure and maintain in full force and effect throughout the Term all permits legally required, excluding only i) RTD Permits or ii) those permits that are the responsibility of the D&B Contractor.
Site Conditions	3.21	The Operator is responsible for all costs and delays presented by any archaeological remains, environmental conditions (other than RTD Retained Environmental Work), geological obstructions and endangered species and responsible for all costs and delays presented by such conditions.
Utilities	3.22, 3.23	The Operator shall ensure that adequate Utilities are available on the sites to facilitate the performance of the services. Operator is entitled to seek a Modification for a Relief Event with respect to any Unidentified Utility.
Rolling Stock Replacement	3.24	The Operator shall maintain, repair and replace consumable and life-expired items for and appropriately rehabilitate or overhaul the Rolling Stock. The Operator shall provide all information and take all action necessary for DTP in the preparation of the Rolling Stock Replacement Report. At the direction of DTP, the Operator shall implement any procurement process for the selection of a Replacement Rolling Stock Supplier. In the case that any Replacement Rolling Stock Supply Contract is entered in to by DTP and RTD, this will be implemented as an RTD Proposed Change and the Operator will be entitled to any adjustment to the Monthly Operator's fee as applicable.
Other RTD projects	3.27	The Operator is obliged to cooperate as necessary to ensure that DTP may comply with its obligations in any RTD Project, including liaising with RTD designated contractors.

Subcontracting	4.1	The Operator may enter into Subcontracts for discrete portions of the Services. Any replacement of any Material O&M Subcontractor will require the approval of DTP.
Limit on Liability and Security Package	10.1	See Table 4.1-1 of this report.
Renewals and Handover	3.4	The Operator shall undertake the maintenance and repairs so that at the Concession Expiry Date, DTP-operated components (including the Rolling Stock and the Concession Equipment) have the residual life specified in the Section 1.2 of Attachment 14 to the Concession Agreement (Handover and Reinstated Work Procedures). The Operator shall participate in and cooperate fully with the Handover and Reinstatement Work Procedures to the Concession Agreement, including examination or inspections, carrying out Reinstatement Work, procuring all Warranties with respect to the Reinstatement Work and obtaining the Handover Security, as well as making timely payment of any Handover Amounts. The Handover Amount is paid to RTD in the instance that any of the infrastructure does not comply in all material aspects with the Handover and Reinstatement Requirements. The Handover Amount will be backed by on demand letters of credit (the Handover Security), see Table 4.1-1.
Warranty	13	Operator warrants that during the Term of this contract, the services shall be performed by qualified personnel and it shall adhere to the O&M Standards. Operator shall promptly repair or correct any defect or deficiency within a reasonable time following notice by DTP, or otherwise DTP will have the right to correct such defect at the cost of the Operator. Commencing from the expiration of the applicable Warranty Period and through the end of the statute of repose period mandated by applicable Law, Operator shall be responsible for all costs and expenses resulting from defects, including latent defects, to the Work (as defined in the Design-Build Contract).
Operator Event of Default	16.4	<ul> <li>DTP may elect to terminate the agreement if any of the following events shall occur, noting that the events listed are those considered of a technical nature only:</li> <li>iii) Operator fails to make payment of any undisputed amounts owed to DTP in 30 days following written notice by DTP;</li> <li>iv) Operator fails for any other reason that failure of DTP to make payments to the Operator when obligated, to make payments due to subcontractors and such failure is not remedied in the time required by applicable law;</li> <li>v) Operator fails to comply in any material respect with any Specified Requirement or Applicable Requirements in the performance of the services and such failure is not remedied within 15 days of written notice from DTP;</li> <li>vi) Operator fails to maintain in effect the O&amp;M Security, or fails to provide the Handover Security;</li> <li>viii) Operator fails to provide or maintain in effect the guaranty;</li> <li>ix) Operator fails to comply with any material requirement of Article 15 (Insurance) and such failure is not remedied within 20 days following written notice from DTP;</li> <li>x) Operator fails to comply with any material requirement of Article 15 (Insurance) and such failure is not remedied within 20 days following written notice from DTP;</li> <li>xi) Operator fails to comply with any material requirement of Article 15 (Insurance) and such failure is not remedied within 20 days following written notice from DTP;</li> <li>xi) With respect to any Commuter Rail Project, Operator fails to commence the Operations Services, a) within 5 days after the date specified within the Operations Notice to Proceed for such Commuter Rail Project, or B) if later, the date specified by RTD pursuant to the Concession Agreement;</li> <li>xii) Operator operates DTP-operated Components in a manner violating the Project Requirements, the O&amp;M Agreement and endangering the safety of Passengers;</li> </ul>

xiii) Operator breaches its obligations in respect of subcontracting under the provisions of 18.1 (Disadvantaged and Small Business Enterprise Programs);

xiv) Any of the representations or warranties referred to in Article 24 hereof prove to have been materially untrue or incorrect to the extent that such breach of representation or warranty has a material adverse effect on the Services or the Project as a whole.

xv) A change in Control of Operator occurs or is proposed (other than a change resulting from a bona fie open market transaction in a recognized public stock exchange) and RTD requests termination of this Agreement as provided in section 46.1 of the Concession Agreement.

xvi) The Availability Ratio of any Commuter Rail Service (treating the Gold Line and Northwest Electrified Rail Segment as a single Commuter Rail Service) is less than 89% in five or more calendar months of any rolling seven-month period; provided that a single, continuous event lasting no more than 30 days extending across two calendar months and directly causing the Availability Ratio in both such months to fall below 89%, shall be deemed to have resulted in an Availability Ratio of less than 89% in the first such month only;

xvii) The Performance Deduction Percentage exceeds 2.9% of the Adjustable Base Service Payment for the relevant month in five or more calendar months of any rolling seven-month period.

xviii) Operator fails to deliver a remedial plan or to diligently implement an approved remedial plan, and such failure is not remedied within 30 days following written notice from DTP;

xix) Operator fails to achieve the Operator Final Completion Requirements.

xx) Operator otherwise is in default of any other provision of the O&M Agreement or fails to perform its obligations under the Contract Documents and such default continues for more than 30 days following written notice from DTP.

Source: O&M Agreement

### **3.4 PENDING DISPUTES**

- 3.4.1 DTP has filed a claim against RTD for cost relief due to additional costs incurred as a result of a Change in Law and Force Majeure. The claim has proceeded through the Concession Agreement dispute resolution process without having reached a resolution, culminating in a court trial which took place before the Colorado District Court. The trial concluded on October 16, 2020 and, as of the date of this report, the parties are awaiting a decision from the Court.
- 3.4.2 The dispute relates primarily to additional costs, delays and damages incurred by the D&B Contractor due to a requirement to situate flaggers at level crossings during the initial stages of operation of the Project, which was imposed because the FRA alleged a violation of regulatory requirements around signal warning times. The violation has since been withdrawn and the flaggers are no longer required. However, there are 5-year FRA Waivers that apply to the crossings due to the deviation in maximum warning times. Upon expiry, DTP, RTD and the FRA will revisit whether these need to be renewed in account of any developments in the wider FRA regulation and the grade crossing warning system that has been accepted by RTD and the FRA.
- 3.4.3 As noted above, the dispute primarily concerns costs which have already been incurred by the D&B Contractor. It is now seeking reimbursement of these costs from RTD alleging a Change in Law and Force Majeure event. Such claim is being passed through to RTD via the provisions of the Design-Build Contract, such that DTP is seeking corresponding relief under the Concession Agreement. Any relief received through the litigation will largely be passed through by DTP to the D&B Contractor, pursuant to the provisions of the Design-Build Contract.

- 3.4.4 RTD has also presented a counterclaim, which is dealt with as part of the same trial process referred to above. The counterclaim relates to costs associated with the delays in completion, as well as to costs associated with several bridges having been designed in accordance with the American Association of State Highway and Transportation Officials ("AASHTO") standards rather than the American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards (refer to Section 5.4 of this report). The D&B Contractor has retrofitted such bridges during the construction period to comply with the AREMA standards, however the counterclaim requests alleged damages due to diminished value, decreased service life, and increased maintenance expenses.
- 3.4.5 Under Section 13.1.2(A) of the Design-Build Contract between DTP and the D&B Contractor, the D&B Contractor will fully indemnify DTP for all damages relating to claims "associated with the design, procurement or construction of the Project." Although the LTA does not express an opinion on this point given that it is outside of its scope, we understand DTP's view to be that RTD's counterclaims relate to the "design, procurement or construction of the Project," and thus, under Section 13.1.2(A) of the Design-Build Contract, if RTD were to prevail on its claims, any associated damages would be recoverable from the D&B Contractor.

### **3.5 LTA OPINION**

- 3.5.1 Overall, the Project Contracts are found to be clearly written and the key provisions are generally consistent with the LTA's experience of similar projects. The transfer of risks and responsibilities within the Concession Agreement to the respective subcontractors is clear and offers adequate protection to DTP and its interests. The interface between the D&B Contractor and Operator is suitably defined in the terms of the Interface Agreement, such that the principal construction risk is retained at the subcontractor level. There are no known material disputes ongoing under any of the subcontracts.
- 3.5.2 The LTA notes that in terms of the security provided from the D&B and Rolling Stock Supply Agreements, the Project is almost outside of the respective warranty periods, being September 2020 for the Gold Line and January 2021 for the last of the rolling stock cars. During these respective warranty periods, the LTA understands there has been no drawing upon such guarantees and that any minor reparative work has been undertaken in good faith. Any defects have been found to be minor elements that do not affect the overall safety and regulatory compliance of the rolling stock. As such, the risks associated with these contracts is considered significantly diminished, especially considering that construction defects risk is assumed by the Operator through the provisions of the Interface Agreement.
- 3.5.3 In terms of the O&M Agreement, it is considered positive that all risks and responsibilities are passed through on a back to back basis. In addition, it is considered positive that the Operator assumes all defect risk from the D&B Contractor through the Interface Agreement. As Renewal Works are also passed down to the Operator, DTP is limited in its exposure to the risk of any capital investments required in the Project. Renewal Works are paid for in accordance with the approved Renewal Works Budget and the five-year forecast is revised annually, providing sufficient opportunity for the Operator to foresee any modifications to the budget which is considered appropriate. See Section 7 for further details on the Operator's approach to the Renewal work.
- 3.5.4 The provisions for Force Majeure, Relief and Delay Events are comprehensive and clear. The general provision for pass down of such events is consistent with the back to back principle that applies to the O&M Agreement. There are clear obligations for the Operator to anticipate and mitigate against the impacts of a Force Majeure event, which are slightly more specific at the Concession Agreement level as discussed in 3.2.3 (such as going so far as to specifying the rearrangement of work fronts as part of the mitigation measures), which is considered a minor issue that is unlikely to yield any notable difference in interpretation between the contracts. There are also no "Termination for Convenience" provisions within the Concession Agreement.

It is also noted that DTP submitted notice of a Force Majeure on 10 March related to the Coronavirus pandemic and its effect on the Project, as per Force Majeure event h) (see Table 3.2-1). Following the notice of Force Majeure, RTD has is understood to be working towards the reimbursement of additional cost associated with Covid-19 cleaning and mitigation measures would be addressed as a Relief Notice, as allowed under the CA. Further details of the costs considered in the Relief Notice are provided in 6.2 of this report. The costs for additional measures are relatively minor. In addition any missed trips as a result of Covid-19 (refer to section 6.2) have so far been excused by RTD, following its communication on April 1, 2020 that "RTD will not withhold service payment for the reduced service on the B & G CR Lines."

# **4** SECURITY PACKAGE ANALYSIS

### **4.1 SECURITY PACKAGE OVERVIEW**

4.1.1 The O&M Agreement with the Operator includes a security package with a Limitation of Liability, a payment and performance guarantee and a standby letter of credit. The details of the OMR security package are shown in the following table:

Table 4-1 O&M Agreement Security Components

COMPONENT		
	The total liability of the Operator is limited during the Term to an aggregate amount of \$67,978,884 (USD 2011), adjusted annually by the percentage change in the Inflation Index.	
	<ul> <li>The limitation shall not include, of note but not limited to:</li> <li>Proceeds of insurance, not to exceed amounts required by Operator;</li> </ul>	
Limitation of Liability	<ul> <li>Costs, liabilities or obligations from Gross Negligence or Wilful Misconduct;</li> <li>Costs, liabilities of obligations that arise from abandonment of the services.</li> <li>Any deductions to any payment of the Monthly Operator's Fee arising from or attributable to any impact to the Availability Ratio or the accrual of Performance Deductions.</li> <li>Any interest due and payable arising from Operator's failure to pay any amounts under this agreement.</li> <li>Commencing from the expiration of the applicable Warranty Period, any costs and expenses resulting from Defects or Latent Defects.</li> </ul>	
	<ul> <li>Sums paid by the Operator to the Design-Build Contractor under the interface agreement.</li> <li>Fluor and Balfour Beatty LLC have provided a guarantee for the payment and performance of</li> </ul>	
Performance Guarantee (Guaranty)	the Guarantees Obligations under the OSM Agreement. Balfour LLC's share of the guaranty is backed by an "Underlying Guaranty" furnished by Balfour Beatty Plc as parent company.	
O&M Letter of Credit	SM Letter of Credit The O&M Letter of Credit is for the Required Security Amount of \$22,659,628 (in 2011 U currently USD \$26,763,286 in 2020 USD), adjusted annually during each year of the Term by percentage change in the Inflation Index. The O&M Letter of Credit shall secure payment by Operator of all sums to DTP (including any losses) owed under the O&M Agreement.	
	The Operator shall provide to DTP an on-demand letter of credit in an amount equal to i) below, should the following conditions be satisfied:	
	<ul> <li>i) If the amount equal to (A) the costs in the Forecast Renewal Work Schedule for such year, less (B) the amount on deposit in the Renewal Works Account for such year exceeds the greater of \$1,000,000 or 10% of the cost of the Renewal Works set forth in the Renewal Work Budget for that year;</li> </ul>	
Renewal Works Letter of Credit	<ul> <li>The amount then remaining undrawn in the O&amp;M Letter of Credit less the amount calculated in i) above is less than an amount equal to 75% of the Required Security Amount; and</li> </ul>	
	iii) The Availability Ratio of any Commuter Rail Service was less than 91% in four or more calendar months in any rolling six month period during the previous year, or the Performance Deduction Percentage exceeded 2.3% of the Adjustable Base Service Payment for the relevant month in any four or more months in any rolling six-month period in the previous year.	
Handover Security	The Operator shall provide the Handover Security, as required under the Concession Agreement, no later than 7 days after the Reinstatement Proposal, but not later than 18 months prior to the Expiry Date, in the form of one or more on-demand letters of credit for the benefit of RTD for a value of 120% of the Reinstatement Amount. The Handover Security must remain in force for a period of 90 days after the Expiry Date.	
Source: O&M Agreement		

## **4.2 OPERATOR REPLACEMENT ANALYSIS**

- 4.2.1 The objective of this section is to provide an assessment of the:
  - Operator limitation of liability prior to termination;
  - Overall maximum liability of the Operator towards the Consortium under the O&M Agreement upon termination; and
  - Liquidity needs under a termination scenario.
- 4.2.2 The commentary and analysis in this section are from a technical perspective only and further legal advice should be sought by the Lenders in relation to any point noted below which could have legal implications either during termination procedures or the procurement of a new Operator.
- 4.2.3 For the termination scenarios, analysis does not address, nor consider, the track record and capabilities of the Operator and/or the likelihood of occurrence.
- 4.2.4 The analysis assumes that termination of the OEM Agreement has occurred in each and every scenario due to having reached the limit of deductions against the Availability Ratio presented in section 9 of this report. It is worthy of note that replacing the Contractor is considered by the LTA to be an unlikely but material event with significant impact to the Project in terms of additional costs and deductions.
- 4.2.5 The LTA has carried out an assessment of additional costs to the Project in the event of the replacement of the Contractor during the Operating Period.
- 4.2.6 The LTA has approached the analysis on the basis of experience with similar projects, thereby ensuring that the technical assumptions made reflect the worst-case scenario, which is technically realistic, although highly improbable. The scenario is not intended to be precise, but rather, serves as a guideline for a worst-case scenario represented in monetary terms as a percentage of the O&M Price.

### **Cost of Replacement and Uplift**

4.2.7 Should an early termination event occur, additional costs would arise during the replacement process until a new contractor becomes fully established. The LTA has tested the Operator Liability Cap by making an assessment of these additional costs of replacement, as described in the table below.

Table 4-2 Costs of replacement of the Operator

ITEM	COST	DESCRIPTION
MO	Availability and Performance Deductions	Allowance for additional penalties that might occur due to the termination event and replacement period. The LTA has conservatively considered a level of deductions equivalent to the amount required to terminate the Operator, for an additional period of 3 months following termination. It should be noted that as per Table 4.1-1, all deductions that have accrued prior to termination that would be subtracted from the Operator's monthly payments are excluded from the Limit of Liability.
М1	Tender Costs	Considers increased DTP staff resources associated with terminating the Contractor and tendering for a replacement contractor.
M2	Ransom Creditors	Creditors might pursue claims relating to arrangements with the terminated Operator against DTP, or DTP might have to incur additional costs to re-engage the incumbent's supply chain to continue operating.
МЗ	Consultancy Fees	Allowance for additional advisory fees for legal (excluding any potential settlement cost) and technical advisors.

	M4	Interim caretakers during replacement period	Considers that during the period of replacement of a new Contractor (3 months), the Consortium will have to employ interim O&M caretakers to ensure the operational responsibilities.
		replacement period	The cost has been calculated taking into account activities considered essential to the normal operation of the Project during the 3-month procurement period.
	М5	Mobilization of incoming Contractor	Considers the cost of mobilization and lack of efficiency of the replacement Contractor during the initial 2 months period after award.
	M6	Additional Maintenance works	Assumes that a non-performing Contractor would have neglected to carry out some routine maintenance. This item considers costs incurred by the incoming Contractor with additional inspections and asset conditioning, assuming a 5% uplift to the annual O&M fee in question.
	М7	Incoming Contractor Price uplift	Considers a premium imposed on the new prices by the incoming Contractor. At this stage, based on similar projects the LTA has considered conservative uplifts of 5% to 10% against different O&M activities over a period of 3 to 5 years (following which costs will converge with market trends) based on the complexity of the activity being performed and the competition within the pool of potential replacement contractors.
Source: LTA		: LTA	

### Results

4.2.8 The LTA analysis has been run for each year of the Operating Period. The annual O&M Payment includes both O&M costs and Renewals, which show the peaks in expenditure. The following graph shows the Limit of Liability against the Annual O&M Payment and the total potential liability per annum. For the avoidance of doubt, the values are nominal values for the given year from 2016 to 2019 and thereafter, real 2020 USD.





Source: LTA Analysis

4.2.9 As can be seen from the above, the worst case is in Year 18 (2035), based upon the modelling of the additional generated costs presented in Table 4-2 above on the current payment profiles (O&M Service Payment and Renewal Payments). The value is presented as a percentage of the Limitation of Liability for the given year.

Table 4-3 Worst Case Scenario Liability (Year 18)

	Worst Case - Costs in	US\$
No.	Name	
M0	Performance Deductions	\$ 4,521,801
M1	Tender Costs	\$ 90,000
M2	Ransom Creditors	\$ 5,659,669
M3	Consultancy Fees	\$ 350,000
M4	Interim Caretakers	\$ 21,080,815
M5	Mobilization Costs	\$ 4,015,393
M6	Additional Maintenance	\$ 4,015,393
M7	OM Contractor Uplift	\$ 12,591,064
	Grand Total	\$ 52,324,136
	O&M Contract % liability	65.2%

Source: LTA

4.2.10 The maximum total potential liability arising from the LTA analysis corresponds to USD \$52.2m or 65.2% of the Limitation of Liability in 2020 USD.

### **Operator - Immediate costs at termination**

4.2.11 In order to determine the need for immediate liquid funds in the event of a termination and replacement of the Operator, the LTA has taken into account the following cost items: M0 – Availability and Performance Deductions; M1 – Tender Costs; M2 – Ransom Creditors; M3 – Consultancy Fees and additional monitoring.

Table 4-4 Immediate costs in the case of Operator replacement (Year 18)

	Worst Case - Costs in US\$						
No.	Name						
M0	Performance Deductions	\$ 4,521,801					
M1	Tender Costs	\$ 90,000					
M2	Ransom Creditors	\$ 5,659,669					
M3	Consultancy Fees	\$ 350,000					
	Grand Total	\$ 10,621,470					
	% of Letter of Credit	39.7%					

Source: LTA

4.2.12 As can be seen, the potential liability requirement of USD 10.6m is significantly below the estimated Letter of Credit amount for the year when considered in 2020 USD (39.7%).

### **Potential Replacement Contractors**

- 4.2.13 The Operator is an integrated company with dedicated staff performing day-to-day maintenance supported by specialist subcontractors, some of which belong to Fluor, Balfour Beatty and ACI and others which are employed by the Operator.
- 4.2.14 All three equity members have experience in managing rigorous inspection regimes on other rail projects. Based on previous LTA experience, it is likely that in the event of one or more parties falling away, these specialist operatives and subcontractors will elect to stay with the project and work under the remaining party. It is expected that any replacement supplier be able to source adequate supply of spare parts, given that these are generally available even in the case that the warranty period has expired with Hyundai (e.g. wheels, braking systems, engines, electrical equipment, batteries are in many cases industry standard).

- 4.2.15 The LTA has considered the US rail market alongside the Project scope of works in order to assess the feasibility of finding a replacement party. A selection of organizations in the industry operating in the region include Bechtel (Bay Area Rapid Transport, Dulles Metrorail), Kiewit (formed a bidder in losing consortium, East Rail Maintenance Facility in Canada), Keolis (Maryland Purple Line original bid) and ACS (LAX APM). Other potential bidders could include Transdev, RATP and Alstom.
- 4.2.16 It is also worth noting that Fluor forms part of DTP and as such, in the event of an Operator default and termination, DTP could potentially elect to self-perform given the retained expertise and staff/etc.

# **4.3 LTA OPINION**

- 4.3.1 According to its analysis, the LTA finds the current O&M Agreement security package to be sufficient in a worst case early termination scenario, both in terms of the total limit of liability and the available liquidity that could be required to cover any immediate additional costs. Assuming the current security is compared against the average Monthly Operator's Fee, the current Limit of Liability and Letter of Credit are approximately equal to 18 months' and 6 months' payment of such Fee respectively.
- 4.3.2 In addition, the LTA considers that the market of O&M rail contractors in the US presents a number of other viable options for acting caretakers or replacement contractors that could assume the responsibilities, also considering DTP's ability to self-perform such services on a short term basis if required.
- 4.3.3 The LTA would typically expect to see a pre-funded renewal reserve account to be included within the Credit Agreement, but given that Renewal responsibilities are fully transferred to the Operator, the risk for such capital interventions is also transferred. The LTA notes there is a mechanism for a Renewal Works Letter of Credit to be provided in the instance that an additional cost is predicted for the Renewal Works during a given year, but that this only predicates funds for those Renewal Works as required in the following 12 months. The LTA notes however, that the remaining value of the O&M Letter of Credit presented in the termination scenario above would also be sufficient to cover the planned Renewals for most of the given years in the remainder of the Concession Period (approximately 18 out of 24 years) which also mitigates the risk of a shortfall for funding of Renewals in the case of the replacement of the Operator.
- 4.3.4 It should be noted that there have not been any draws on the Letter of Credit thus far in the Project.

### **5.1 INTRODUCTION**

- 5.1.1 This section of the report has been prepared to provide an overview of the status of construction at the time of writing, elaborating around any consideration which is considered of material relevance for DTP and potential Lenders of the Project.
- 5.1.2 As part of the technical due diligence, the LTA undertook a virtual site visit on the Project, due to international travel restrictions that are in place to combat the global Covid-19 pandemic. Information has been provided by DTP in the form of photographic registers of as-built infrastructure and videos taken on the rail services themselves. This information, combined with others such as technical reports, has allowed the LTA to make a general assessment of the current status of the asset condition, taking into account its technical specifications and time in operations.

# **5.2 STATUS OF COMPLETION MILESTONES**

- 5.2.1 The A-Line entered Revenue Service in April of 2016, was awarded the Revenue Service Commencement Certificate ("RSCC") in September 2018, and the Final Completion Certificate ("FCC") in September 2019. Therefore, all completion milestones have been met for the A Line.
- 5.2.2 The B-Line entered Revenue Service in July of 2016, was awarded the RSCC in October 2017, and the Final Completion Certificate in May 2018 Therefore, all completion milestones have been met for the B Line.

The G-Line was awarded the Revenue Service Commencement Certificate RSCC in March 2019 and entered Revenue Service in April 2019. The FCC was achieved in November 2020. Therefore, all completion milestones have been met for the G-Line.

	EAST CORRIDOR ("A LINE")	NWES ("B LINE")	GOLD LINE ("G LINE")
Date of Revenue Service*	April 22, 2016	July 25, 2016	April 26, 2019
Date of Revenue Service Commencement Certificate**	September 6, 2018	October 20, 2017	March 31, 2019
Date of Final Completion Certificate	August 2, 2019	May 4, 2018	November 16, 2020

Table 5-1 Summary of Completion Milestones

\*Date on which the line began providing service

 $^{\ast\ast}$  Date on which the Revenue Service Commencement Certificate (RSCC) was awarded.

### **5.3 QUALITY AND NCRS**

- 5.3.1 DTP, D&B Contractor and Independent Engineer have closed out all of the items in the current NCR log. Upon completion and subsequent testing and commissioning of those Commuter Rail Lines which have been brought into service, the principal type of NCR's related to the following:
  - Incorrect placement, dimensions or parameters of constructed elements such as lighting poles, plug sockets, finishes, etc.;

- Deviation from technical specifications following lab testing such as certain concrete samples and asphalt mixes;
- Non-conforming station items constructed in relation to American Disabilities Act specifications.
- 5.3.2 An extract of the NCR log is shown in the following image. The last NCR was noted in March 2017 and all NCRs have been successfully closed out.

#### Figure 5-1 Example of NCR Log

CDRL 9-31.NCR Final Log: Non Conformance Report - Final Log								
DC Reference	Document No	Title	Rev	is Status	Functional Area	Revision Date	Type	Sub Project
09-31.NCR-0450	CDRL 9-31. NCR-0450-E1I-140916: Colorado Station light pole pliaster blockout to large	CDRL 9-31. NCR-0450-E1I-140916: Colorado Station light pole pliaster blockout to large	0	Closed	Structural		Non Conformance Report	EAST1 - (EC1) East Corridor within CCD
09-31.NCR-0451	rebar spacing for #5 bar for stairs incorrect		0	Closed	Structural	Sep 17, 2014	Non Conformance Report	EAST2 - (EC2) East Corridor within City of Aurora
09-31.NCR-0452		CDRL 9-31, NCR-0452-N19J-140924; Wall N0208W - Final Pile Batter	0	Closed	Structural	Sep 25, 2014	Non Conformance Report	NWES2 - (NWES2) Northwest ES within Adams County
09-31.NCR-0453		CDRL 9-31. NCR-0453-022F-140918: Wall G0365S Footing Poured in Wrong Location	0	Closed	Structural	Sep 19, 201-	Non Conformance Report	GOLD2 - (GL2) Gold Line within City of Arvada
09-31.NCR-0454	CDRL 9-31. NCR-0454-G245-140918: Failed Laboratory Test Results	CDRL 9-31, NCR-0454-G24S-140918: Failed Laboratory Test Results	0	Closed	Civil / Site Work	Sep 18, 201-	Non Conformance Report	GOLD3 - (GL3) Gold Line within City of Wheat Ridge
09-31.NCR-0455	CDRL 9-31. NCR-0455-E3T-140919: Peoria Station Detension Basins Additional Concrete Modification	CDRL 9-31. NCR-0455-E3T-140919: Peoria Station Detension Basins Additional Concrete Modification	0	Closed	Drainage	Sep 19, 2014	Non Conformance Report	EAST2 - (EC2) East Comidor within City of Auron
09-31.NCR-0456	CDRL 9-31. NCR-0456-E4A-140919; I-70 Fly-over Bridge Ballast Keeper Constructed Incorrectly	CDRL 9-31, NCR-0456-E4A+140919: 1-70 Fly-over Bridge Ballest Keeper Constructed Incorrectly	0	Closed	Structural	Sep 19, 201-	Non Conformance Report	EAST2 - (EC2) East Corridor within City of Autora
09-31.NCR-0457	CDRL 9-31. NCR-0457-N8C-140918: Wall N0076W Concrete Failed to Meet fc	CDRL 9-31. NCR-0457-N8C-140918: Wall N0076W Concrete Failed to Meet fc	0	Closed	Structural	Sep 18, 201-	Non Conformance Report	NWES1 - (NWES1) Northwest ES within CCD
09-31.NCR-0458		CDRL 9-31. NCR-0458-E3T-140918: Unapproved concrete mix placed for C & G in Aurora CDRL 9-31. NCR-0459-E2P-140919 - Central Park	0	Closed	Civil / Site Work	Sep 19, 201-	Non Conformance Report	EAST2 - (EC2) East Corridor within City of Aurora

Source: DTP NCR Log

5.3.3 In addition, it has been confirmed to the LTA that there are no current Defects, Legacy Issues or Reparative Work relating to any of the operational infrastructure.

### **5.4 ASSET CONDITION REVIEW**

- 5.4.1 This section of the LTA report provides an overview of the asset condition assessment and status of any construction related issues perceived during the virtual site visit and review of the associated documentation. As is normal in P3 project such as this, the future Operator is very meticulous in the handover of assets to its care from the D&B Contractor. even if this is from another branch of the same organisation, as the Operator needs to have a suitably robust asset base from which to maintain the assets to enable it to optimise the payment and penalty schemes.
- 5.4.2 In this case the Operator was engaged within the design process from the beginning of the bid stage and so it worked with the D&B Contractor to provide a cost effective efficient railway network over the term of the CA. It is therefore clear that the Operator was in a strong position to ensure that the assets were delivered to FRA and local standards, as well as satisfying their own requirements. In addition, with the Operator residing on site during the construction, completion, testing and commissioning stages of the Project it was able to record all the necessary As-Built details required, for the ongoing maintenance and if required to observe the quality of the finished products.

### Structures

- 5.4.3 Very little of the underbridges (those bridges which carry the Metro) can be viewed as part of the virtual tour (see 1.4 and 5.1.2 of this report). However, the quality of bridge deck surfaces, where the permanent way had direct fastening to the deck, seemed to be in good condition, as did the tops of the parapet walls retaining the ballast on the majority of underbridges.
- 5.4.4 The retaining walls and abutments of the overbridges also seemed to have high quality finishes, with the adoption of precast reinforced concrete for most structures, the quality of the concrete finishes was seemed to be very good.

- 5.4.5 It should be noted that during construction, the D&B Contractor had to rebuild the Jersey Cut Off bridge that was identified as not meeting the service life requirements. No further issues have been identified with the rebuilt bridge.
- 5.4.6 As presented in 3.4 of this report, the RTD has presented a claim for the alleged costs that are projected to be incurred once the Project has been handed back to RTD due to additional maintenance and diminished value considered as a result of the retrofitting of 16 (of 34) bridges during the construction phase. The bridges required retrofitting after the Project Manager within DTS identified that the AASHTO code had been followed instead of the AREMA code. Several revisions were made to the design revision and quality management processes, including the separation of the design approval to an independent entity. Following the retrofitting works and revision of all structures, the independent design reviewer, the IE and DTP were able to verify compliance with the technical specifications of the CA. There have been no further issues reported as a result of the failure to follow the direct design codes or the retrofitting works.
- 5.4.7 The retrofitting works included bridge girder replacement and improvement of the bridge deck using fibre reinforced plastic covers on some of the bridge decks as well as the steel collars fitted to the piers. As such, the Operator is undertaking additional inspections and an allowance has been made for the additional painting for UV protection to the fibre reinforced plastic covers where they were placed on some of the bridge surfaces. The costs for such works has been included in a settlement between the D&B Contractor and the Operator through the terms of the Interface Agreement, in which any final adjustments to the as-built infrastructure, for example minor changes and modifications, and the associated maintenance impacts were settled.
- 5.4.8 DTS reported to the LTA that these changes have ensured that all the bridges supporting the railway now comply with the AREMA Code.
- 5.4.9 It should be noted that the IE has not reported any ongoing non-compliance with AREMA standards, nor provides mention of the propensity for additional costs alleged by RTD in the RSCCs.

### **Stations**

5.4.10 The station structures are very simple: precast reinforced concrete elements to construct the platforms with standard steel columns and beams with glass infill panels to form the platform shelters. This provides the stations with a crisp, high quality finish.

### Permanent Way

5.4.11 Two distinct forms of Permanent Way have been used in the new routes: ballasted track and slab track. The ballasted track has been well formed with the minimum of waste material left on the edges of the trace. Similarly, the slab track form has been well constructed with high quality finishes. The LTA also notes that most importantly the ride quality in all the videos watched showed a very high-quality ride throughout, indicating precision construction of both track forms as well as properly constructed interfaces with the track form transitions. A review of the Enterprise Asset Management ("EAM") system via a Microsoft Teams Meeting indicated that there had been no remedial track work required in the early years of the contract.

### Systems and Catenary

- 5.4.12 The Train Management and Dispatch Systems ("TMDS") supplied by Wabtec provides the software interface between the Positive Train Control ("PTC") and the OCC. The TMDS enables the train drivers to operate the trains using primarily Line of Sight with human intervention with signal lanterns providing occupancy advice for the track ahead, the TMDS provides in cab advice to the drivers and regulates the train speed, stopping the train if it breaks the trains speed envelope (i.e. the recommended line speed in any location, combined with the braking deceleration curve in front of any red signal, the train in front, or other obstruction.)
- 5.4.13 The Supervisory Control and Data Acquisition ("SCADA") is used to monitor the mechanical equipment within the ROW as well as on the trains in order to provide real time infrastructure alerts, and the Network Management System ("NMS") is used to monitor and control the traction power network and the Overhead Catenary System ("OCS").
- 5.4.14 The LTA has seen the recent and historic performance figures for the systems within the ROW which indicates that the Systems have been operating to a reasonably consistent high performance level; indicating their suitability for the task, and their resilience within an operating railway.
- 5.4.15 Similarly the LTA has been able to observe the Overhead Catenary System ("OCS"), that supplied the traction power to the trains, via videos of the route and would comment that, as far as can be seen, it has been installed to a high standard. The operational figures for the OCS would also indicate that they are performing at a consistently high standard.

### **Rolling Stock.**

5.4.16 The rolling Stock fleet consists of 66 Hyundai Rotem cars, The LTA could view the rolling stock fleet on various videos showing the condition of the interior and exterior of the main cabins as well as some views as they are put through the CRMF and would judge from this that they are maintained to a high standard as required by the FRA (see below).

### **5.5 LTA OPINION**

- 5.5.1 The LTA has worked with Fluor and Balfour Beatty Railway ("BBR") on several projects elsewhere in the USA, including LAX APM, and Europe and recognises the trademarks of both companies meticulous attention to detail in the construction and finishing of the structures that it constructs on all of its projects.
- 5.5.2 It is noted that at this stage of the Project, the risks associated with the construction and procurement of rolling stock are significantly diminished, as there are no outstanding works to be completed and Final Completion has been achieved on all Commuter Rail Services.
- 5.5.3
- 5.5.4 The LTA has undertaken an assessment of the asset condition based upon the information provided for the virtual site visit, technical information reviewed as part of the due diligence and meetings with the members of DTP and the Operator. Based upon this information, the infrastructure is considered fit for purpose and its condition is consistent with the age and usage at the time of the review. The NCRs registered during construction are considered typical and it has been informed that all have been remedied by the D&B Contractor. Given that there have not been any major issues relating to construction quality such as open Punch List items, or defects, there is no material risk foreseen with the construction at the time of writing. In the event that a defect is identified, it would be the liability of the Operator in accordance with the terms of the O&M Agreement. In addition, given that the finished railway has been handed over to the Operator with the same shareholders, the LTA has no current concerns as to the quality and durability of the engineering structures.

5.5.5 Regarding the retrofitting work that was undertaken on the bridge structures, this was considered sufficient to ensure compliance with the AREMA standards by the IE at the time of each RSCC. It is therefore the LTA's opinion that these bridges are compliant with the relevant design codes. The LTA considers that any additional costs as a result of the retrofitting should not be significant given the scope of additional inspections and repainting. Any additional costs that may arise would be borne by the Operator through the Interface Agreement (see 3.4 of this report) and it is understood that settlements have been made as appropriate with the D&B Contractor.

### **6.1 INTRODUCTION**

- 6.1.1 The Operator is responsible for providing (i) turn-key operations including management, train operators, dispatchers, and maintenance personnel to run the three commuter lines of the Project; and the commuter passenger service; and (ii) turn-key operational capabilities for the vehicle maintenance shop, parts ware house, OCC, on-duty location for operations and maintenance crews, and the administrative function of the Project.
- 6.1.2 In this section the LTA evaluates DTP and the Operator's ability to satisfy operational specifications against the Project's current operational performance.

### 6.2 OSM APPROACH AND ORGANISATION

6.2.1 Overall, the Operator shall provide the Commuter Rail Service and certain associated operations and maintenance services for each line continuing until the end of the O&M Phase. A detailed description of the Operator's scope, responsibilities and liabilities are defined in Table 3-6 of this report.

### **Organisational structure & Staffing:**

6.2.2 The Operator has a structure of approximately 60 staff arranged as per the organigramme depicted in the figure below:

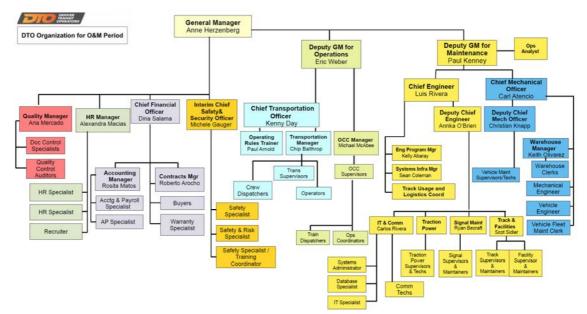


Figure 6-1 Operator organisation and staffing

Source: the Operator

6.2.3 Historically, the Denver region has been characterised by having a very active regional employment market (e.g. ~2% of unemployment rate as of February 2020). This has led the Operator to undergo episodes of qualified staff turnover such as drivers and operators due to competitive pressures, reflecting in a risk of a shortage of skilled staff within the Operator's organisation.

- 6.2.4 Based on the information provided by the Operator, the staff levels have historically been slightly below targeted (between 2 and 5%). To compensate the staff turnover and bridge the gap between targeted and actual staff levels, the Operator continually hires personnel for the roles of train operators and maintenance staff.
- 6.2.5 In addition, to increase its resilience, the Operator has in place a programme to train new staff members. The typical training regime is 12 weeks, split between classroom time and actual operating or maintenance time with a supervisor. This pace allows for replacement of any staff turnover minimising potential operating failures or performance impacts during the induction process.
- 6.2.6 The Operator carries out most of the activities associated to its scope in house, except for cleaning which is outsourced. However, it is worth highlighting that within the Operator's current structure there are some seconded personnel from the D&B Contractor as well as associates and experts from the parent companies. It is expected that personnel from the D&B Contractor return to the respective parent companies once all remaining obligations under the D&B Contract have been fulfilled, as is considered common industry practice.

# **O&M Reporting Process:**

- 6.2.7 Compliance measurement of O&M and service requirements is self-performed by the Operator. The process starts with the Operator's continuously gathering data on delay events, maintenance events, and performance events leading to the application of STOP Points from (i) the sensors located in the infrastructure; (ii) the surveillance systems on the rolling stock; and (iii) visual inspections from the operators, maintenance personnel and / or rolling stock drivers. All the information is automatically (manual inputs are also possible) transferred into the EAMS which generates the reports.
- 6.2.8 The frequency of the reports is monthly, quarterly and annually. These are shared internally to DTP's board and externally to RTD for their sign-off. In case there is a disagreement between DTP and RTD regarding any of the information included in the report, the parties have the opportunity to solve any particular points before a dispute process.
- 6.2.9 In addition, the Federal Railroad Administration ("FRA") has undertaken random visits to the Project since the commencement of the O&M Phase, conducting inspections of the infrastructure and rolling stock.
- 6.2.10 Considering the Project has been in operation for 4 years, the Operator has accrued relevant actual information regarding its performance and compliance with the operation and maintenance requirements defined in the Concession Agreement. Please refer to Section 9.5 of this report for the Operator's actual performance to date and the bonuses or deductions accrued during the period since the start of operations.

### **Covid-19 Impacts on Operations**

- 6.2.11 DTP and the Operator have incorporated both state and national specific guidelines, the latter led by the Centres for Disease Control and Prevention ("CDC"), in order control and prevent the spread of Covid-19 within the Project and its infrastructure.
- 6.2.12 As a consequence, there is an agreed Covid-19 protocol that contemplates working from home where possible, additional cleaning with specific products, installation of extra sanitisation equipment, increase of train headways (except for the East Corridor) and a reduction of the train passenger capacity down to 33%. The increase of headways is as follows.
- 6.2.13 On 19 April, RTD and DTP agreed to change the frequency of trains as follows through the implementation of a Covid-19 Contingency Plan developed by the Operator and DTP following request from RTD:

- NWES (B Line) from 30 minutes to 60 minutes;
- Gold Line (G Line) from 15 minutes (peak) and 30 minutes (off peak), to 30 minutes all day;
- 6.2.14 Prior to the service reduction there were 324 trips per day and since the frequency of trains has been reduced, there are 261 trips per day. As part of the service changes, the Operator submitted a revised timetable to account for the reduction of services on the B and G Lines. Prior to the development, RTD communicated on April 1 that "RTD will not withhold service payment for the reduced service on the B & G CR Lines." The reduced service has since been extended to at least January 2021.
- 6.2.15 This followed a period during April when the Operator was unable to fulfil service requirements due to labour shortages and some cancelled services due to the need to administer cleaning precautions associated with bio events (involving bodily fluids of passengers.) The total number of missed or cancelled trips is 29. However, since this period there have been no missed trips due to Covid-19.
- 6.2.16 The additional cleaning and mitigation measures include but are not limited to providing PPE to the Operator employees, setting up sanitation stations throughout the CRMF, and additional cleaning agents/virucides applied via electrostatic sprayers that the CDC and Prevention have noted are effective against Coronaviruses. These are also being implemented across the wider RTD network and the parties continue to analyse these and other technologies in their efforts to mitigate against the effects of the pandemic.
- 6.2.17 It is noted that there DTP and the Operator continue to work closely with the suppliers and fabricators to ensure there are no delays or disruptions to the supply chain as a result of the pandemic.
- 6.2.18 The cost impact of Covid-19 has been limited to the additional costs related to the Covid-19 cleaning and mitigation measures referenced above in 6.2.16. The current estimate for the costs is approximately \$26,000 per month from March projected through December 2020.
- 6.2.19 DTP submitted notice of a Force Majeure on 10 March related to the Coronavirus pandemic and its effect on the Project. Since the submission of the Force Majeure notice, the parties have agreed to address reimbursement for additional cost associated with Covid-19 cleaning and mitigation measures via the mechanism of a Relief Notice, as allowed under the CA. The Relief Notice is being worked on collaboratively between the parties and has not yet been finalized.
- 6.2.20 The Operator is providing weekly updates to RTD on Covid-19 related impacts and there is a weekly Covid-19 call.

### 6.3 O&M PLAN

- 6.3.1 The Operator has been developing its Rolling Stock, Facility and Infrastructure Maintenance Plan ("RSFIMP") since the bid stage of the Project, based on the operations experience within the Consortium as well as utilising the maintenance and renewal requirements of their supplier chains.
- 6.3.2 The RSFIMP has been developed to identify the methods by which the Operator will manage and control the maintenance of the major capital assets. It describes the maintenance management approach, including the decision process that will be used to determine when the major capital assets will be replaced.
- 6.3.3 The Operator confirms that the RSFIMP was prepared in accordance with the Concession Agreement (i) fulfilling the requirements of Title 49 of the Code of Federal Regulations ("CFR"); and (ii) following the guidelines published by the American Public Transportation Association ("APTA").
- 6.3.4 The RSFIMP describes the Operator's maintenance program, in accordance with the Concession Agreement including:

- Reliability and maintainability requirements for the Rolling Stock fleet and fixed assets;
- The maintenance and inspection functions and the frequencies required;
- The personnel or subcontractors that will perform those functions, as well as their training requirements; and
- The quality control and monitoring systems.
- 6.3.5 The RSFIMP includes procedures, standards, frequencies and schedules for the performance of maintenance functions related to the Rolling Stock the fixed assets and other components such as:
  - The CRMF, including its the storage facilities, parking surfaces, structures, landscaping, elevators, mechanical, electrical and life safety systems;
  - The stations, platforms, and station amenities, foot paths, parking surfaces, associated structures, landscaping, escalators and elevators, mechanical, electrical and life safety systems; and
  - The rolling stock,
- 6.3.6 The RSFIMP is divided into the following plans:
  - Permanent Way;
  - Bridges, Drainage, Culverts and Channels;
  - Signal and Train Control Maintenance;
  - Communications System;
  - Traction Electrification System;
  - Power Distribution System;

### 6.4 HEALTH & SAFETY APPROACH & PERFORMANCE

- 6.4.1 DTP and the Operator have a policy of continuously promoting safety awareness in order to propagate a safety culture across the Project. As a consequence, both organisations have zero tolerance policies for unsafe work practices and have increased safety management visibility in the field conducting periodic safety leadership training.
- 6.4.2 The Operator has in place a health and safety plan: System Safety Program Plan ("SSPP") which is overseen by DTP and the Operator safety management staff to prevent unsafe work practices. This plan has been continuously reviewed and updated (latest version January 2020) to meet the Project's requirements since the start of the O&M Phase and to incorporate additional FRA regulations when applicable.
- 6.4.3 The System Safety Program Plan is consistent with the Concession Agreement requirements and includes 23 elements or chapters amongst which are provisions related to safety contract requirements, facilities and vehicle maintenance and inspections, training and certification, hazard management process, accident/incident reporting investigation, security, emergency planning and response etc.
- 6.4.4 The Operator also has a "Pandemic Preparedness and Response Policies and Procedures Manual" which has been developed and maintained in a similar fashion to the SSPP regarding the approach to identifying and mitigating the risks of the pandemic.
- 6.4.5 The following table summarises a list of categories related to accidentality and the number of incidents recorded in the Project during the O&M Phase:

Table 6-1 Accident and incident records (2016-2019 full year / 2020 year to date)

CATEGORY	2016	2017	2018	2019	2020
RTDC – FRA Reportable Injuries					
FRA Reportable Injuries	4	5	3	0	2
Lost Days	1	21	3	0	12
Restricted Days	31	133	5	0	28
the Operator - All Injury Information					
FRA Reportable Injuries	4	5	3	0	2
Lost Time Cases	1	4	2	0	1
Lost Days	1	23	10	0	12
Restricted Day Cases	2	2	0	0	1
Restricted Days	31	156	182	0	28
FRA Accountable	0	2	7	3	1
Rail Equipment Incidents					
Rail equipment incidents/million passengers train mile	1.65	1.14	0.38	0.3	2.33
*RTDC ("Regional Transit District Commuter")					

Source: the Operator

- 6.4.6 Trespassing is a major issue in railway projects. This is mostly as a result of the inherent mobility culture of the users (trying to shortcut where possible). Based on the information provided by the Operator one of the Project's higher incident areas for trespassing is towards the end of the East Corridor where airport workers often cross the tracks in front of the carriages.
- 6.4.7 To prevent such situations (as well as similar ones occurring along the Project's length), the Operator has in place as part of the SSPP a "Trespassing and Intrusion Program" which includes, among others, specific training for the employees to observe and report any breaches in fences and gates. The Operator has also launched various campaigns to raise user awareness which comprise talks and presentations at schools, public announcements, mass mailings, etc.; and participates in the Operator has been supported by the local strives to minimise trespassing. In addition to these campaigns, the Operator has been supported by the local police which have increase the supervision of trespassing violations in the higher incident areas and is imposing fines to the users that do not comply. RTD is also involved in the promotion of awareness on this issue, such as through TV advertisements.
- 6.4.8 Given the sensitivity of the matter, monthly reports are shared with the board.

### 6.5 LTA OPINION

6.5.1 The Operator's organisation structure is considered robust and contemplates the expected roles based upon the scope of the Project. Despite the staff turnover episodes experienced, the Operator is currently taking appropriate measures to mitigate against this risk. However, should the demand continue to increase, the project may have to bear the risk of inflated salaries for specific roles. It would be expected that current weakening economic conditions in the midst of a pandemic would reduce the probability of this in the short term however.

- 6.5.2 The Operator has in place sufficient documentation and materials that provide (i) guidance to the existing and new staff members; and (ii) adequately assigns responsibilities amongst the various departments of the Operator.
- 6.5.3 The reporting process with RTD is clear and of a suitable frequency both internally (DTP and its board) and externally (RTD) for making the parties aware of any events in the day to day O&M. In addition, the LTA considers positively that, based on the information provided by DTP, there have not been major disagreements with RTD, and the dispute process has not yet been required during the O&M Phase.
- 6.5.4 Despite having recorded a few trespassing incidents throughout the O&M Phase of the Project (including the fatality of a cyclist in June 2020) the LTA notes that the Operator has in place similar mechanisms to those seen in other projects of similar nature in the region to minimise trespassing.
- 6.5.5 Overall, the impact to the Project as a result of Covid-19 has been considered relatively minor. The initial operational impacts in the form of cancelled train trips witnessed in the early months of the pandemic, have been mitigated by a reduced service schedule. It is considered positive that RTD has been made aware of potential additional costs pertaining to the daily sanitation measures and although no claims have yet been formally reimbursed, it has shown a willingness to recognize direct cost impacts through the preparation of the Relief Notice. The cost impacts relating to enhanced cleaning measures are minimal in the context of the overall O&M budget, and the parties are working collaboratively through the Relief Notice mechanism to provide compensation.
- 6.5.6 RTD and DTP continue to work collaboratively in the implementation of the Covid-19 protocols, which have included deep and regular cleaning, social distancing and the increase of train headways. Such measures are understood to currently being implemented consistently across the wider RTD network with success. RTD also confirmed it is undertaking a constant review of the Covid-19 protocol in order to assess whether it need change the measures being implemented on account of a change in the risks and regulations related to Covid-19.
- 6.5.7 Lastly, the health and safety plan in place (SSPP) covers the topics and includes the level of detail that the LTA would expect to see for a project of this nature and size. The LTA notes that the companies forming the Operator have extensive experience in the operation and maintenance of railway projects of similar size and complexity which is reflected in the good health and safety records seen across the first 4 years of operations.

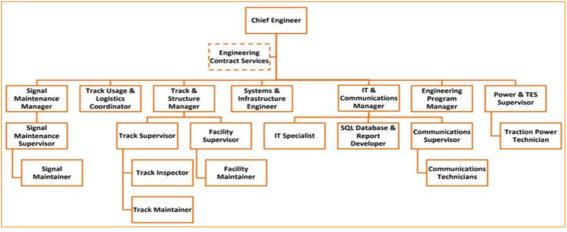
### 7.1 INTRODUCTION

- 7.1.1 The Operator is responsible for providing maintenance of (i) Rolling Stock, stations, track, signalling equipment, systems, grade crossing equipment, communications equipment, buildings, and structures; (ii) the RTD-owned right of way including track, structures, systems, grade crossings, and station facilities of the three commuter lines of the Project; and (iii) the CRMF including the payment for all associated utility costs.
- 7.1.2 In this section the LTA will evaluate DTP and the Operator's ability to satisfy major maintenance and handback requirements defined in the Concession and O&M Agreements.

### 7.2 MAJOR MAINTENANCE AND REHABILITATION SCOPE

- 7.2.1 The Infrastructure Maintenance Plan describes how the Operator maintains the fixed infrastructure of the commuter rail right-of-way ("ROW"); the track, signalling, train control, communications, and the OCS and traction power distribution systems. The Infrastructure Maintenance Plan is the guide for the Operator personnel in carrying out the following maintenance responsibilities:
  - Track including rail, special trackwork, joints, ties, fastening system, ballast and sub-ballast;
  - Grade crossing equipment including crossing gates and mechanisms, cantilevers, and audible and visual warning equipment;
  - Civil works including drainage, fencing, wayside lighting, signage, and bridge inspections;
  - Train control systems including Positive Train Control ("PTC") equipment, switches and switch heaters, wayside signals, grade crossing controls, train control circuitry and other associated equipment;
  - Communications system including Train Dispatch and Electric Power SCADA, fibre-optic facilities, GPS facilities, closed-circuit TV, public information displays and public address systems at station platforms, emergency and blue light telephone systems, and radio systems; Maintenance of the Traction Electrification System ("TES") including the traction power substations and Overhead Catenary System ("OCS"). This includes the maintenance of all traction power switchgear, breakers, utility power feeders, contact and messenger wires, support structures, impedance bonds, and other associated equipment.
- 7.2.2 The Chief Engineer or designee is responsible for ensuring compliance with all the requirements of this document. This Plan will be reviewed every three years and amended as necessary.
- 7.2.3 The Engineering Department has seven separate groups responsible for the Track & Structures, Systems and Infrastructure Engineering, Power & Traction Electrification Systems, IT & Communications, Signalling, Track Usage and Logistics Coordination, and Engineering Programme Management. Each group is led by a qualified supervisor and is staffed with appropriately skilled and trained personnel with the necessary tools and materials to complete their tasks. the Operator uses Original Equipment Manufacturer ("OEM") supplied diagnostic software tools for troubleshooting and to retrieve diagnostic information that aids in the repair, maintenance, and testing of equipment.

Figure 7-1 The Operator Engineering Department Organisation



Source: The Operator

- 7.2.4 The Engineering Department is responsible for managing all aspects of the management routines for its fixed assets including:
  - Equipment failures & status, as well as predicting revised residual life in assets from recorded observations and calibration onsite inspections and programmed maintenance activities;
  - All preventive and corrective maintenance for the infrastructure and rolling stock are planned, scheduled and recorded and tracked using the Enterprise Asset Management System ("EAM"). This system is used to the record data and perform analyses to inform both management and engineering divisions on work progress as well as infrastructure rolling stock performance trends to help reduce the cost of maintaining physical assets. All maintenance personnel are trained in the use of EAM;
  - O&M Record Documents are kept (in native electronic file format and in other approved electronic file format or hard copy) at the CRMF offices during the Operating Period; and
  - The Engineering Department plans maintenance and inspection activities to minimize impacts on commuter rail service. The following periods are available for maintenance:
    - Non-revenue hours, after the last train of the day and before the first train of the next day. This
      is the only period in which work that requires track disturbance or a power outage and grounding
      of Traction Electrification System (TES) can be performed without affecting passengers;
    - Off-peak service, when service is operating below peak frequencies. At these times, it is sometimes possible to operate trains in alternating directions on a single track, while the other track is out of service for maintenance, i.e. during off-peak hours, the half-hour headways on the Gold Line and the East Corridor and the one-hour headways on the NWES are long enough to allow service to operate on one track. The TES sectioning allows for grounding of the Overhead Catenary System (OCS) on the out-of-service track; and
    - During peak periods, inspection and maintenance work can take place without affecting passengers only if there is no need to take track out of service or to ground the OCS.
- 7.2.5 Line closures are occasionally necessary to support major maintenance or engineering work. the Operator is required to coordinate off-peak line closures with RTD. Plans for closures include alternative transportation service, such as busing passengers from stations around the work sites, and advance notice to the public. In addition, the Operator coordinates with local jurisdictions and provides them with the opportunity to capitalize on the off-peak line closures to perform inspections or maintenance of their own infrastructure.

### Enterprise Asset Management System (EAM).

- 7.2.6 The Operator uses EAM to manage all aspects of the management routines for its fixed assets including:
  - 1. Preventive maintenance scheduling & work documentation, prompting site inspections and asset replacement in line with the manufacturers' and FRA requirements;
  - 2. Defect tracking & repair documentation;
  - 3. Condition tracking & renewals management;
  - 4. 3<sup>rd</sup> Party Work project management;
  - 5. Inventory & Tool Management including monitoring the spare parts warehouse and flagging shortages to the procurement team, as well as prompting tool calibration tests;
  - 6. Procurement & Warranty Management by providing the procurement team with order forms for lists of stock from regular, approved suppliers;
  - 7. Scheduled and Ad Hoc Reporting including compliance reports; and
  - 8. STO Point penalty reporting, including automatically reporting any STO defect in real time to the relevant maintenance team with details as to the fault and notification of the required completion time.

#### — LTA Opinion

- 7.2.7 The organisation and associated communication channels are in line with good standard management structures, typically seen for the O&M of a City Metro. The LTA has observed the commitment, and experience of the senior management team and has no doubt that they have recruited suitably qualified staff to support them; this view is supported by the good operational performance and the current strong financial position against the overall maintenance budget shown to date (see Section 10 of this report).
- 7.2.8 EAM is a one of the best asset management tools in the railway industry and is well known by the LTA. The LTA also notes that the Operator has put in place sufficient checks and balances within the input and output points by ensuring that the data being fed in is done by suitable qualified staff, whose access is limited to their areas of expertise. Similarly, the issue of all purchase orders to suppliers are given sufficient internal scrutiny before being sent out.

### **Track Maintenance**

7.2.9 All track is inspected and maintained, including Mainline track, special trackwork, track not used in revenue service, The DUS tracks for Amtrak Service, and Run-around and Storage tracks at a minimum, to FRA Class 4 standards. CRMF Track will be inspected and maintained to Class 1 standards.

INSPECTION TYPE	2X WEEKLY	MONTHLY	QUARTERLY	BIANNUAL	ANNUAL	AS NEEDED	INSPECTION TYPE
Track Walking /Hi-Rail	х						Review: rail, chair, ties, ballast defects. Alignment defects by Hi-Rail only
Geometry						х	To establish track re- profiling

Table 7-1 Track inspection schedule

Ultrasonic	X Rail internal defect inspection
Rail Seat Abrasion	X Annual Walking Inspection
Turnouts X	
CWR X	Х
Grade X Hi-Rail X Walking Crossing	Inspect all components
Severe Weather Event	Inspection for track X damage by extreme hot or cold weather
Source: the Operator	

### — LTA Opinion

7.2.10 The LTA is satisfied by the track inspection regime set out by the Operator as it conforms to the normal regularity of inspections expected for a railway of the size and expected loadings of the Denver Metro. The forecast spend profile of the track assets conforms to the expected low annual costs in the first half of the contract, with the occasional peak in spending corresponding to spot tamping and point renewals, with costs increasing in the final quarter with more plain rail replacement and more general tamping and ballast renewal.

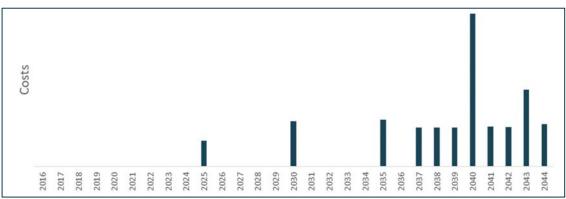


Figure 7-2 Renewal Budget for Track (costs are removed for confidentiality purposes)

Source: the Operator

### Bridges, Drainage, Culverts and Channels

- 7.2.11 Culverts and drainage channels are inspected during the Drainage/Cleaning monthly inspection. The condition and any defects found are recorded in the EAM. Each drain, cross-drain or other water-carrying facility under or immediately adjacent to the ROW must be kept free of debris and obstructions, including but not limited to vegetation, to accommodate water flow.
- 7.2.12 In the event of an occurrence such as severe weather, flooding, earthquakes, etc., culverts and channels are inspected immediately after each event.
- 7.2.13 Culverts, retention ponds and drainage channels are maintained by the Track crews as directed by the Track Supervisors. Depending on the operation, this is performed during non-revenue maintenance periods or possibly require a track outage.
- 7.2.14 East Corridor has 33 structures, Northwest Corridor has 22 structures, and the Gold Corridor has fourteen structures, including the Outer Ring Road ("ORR") flyover.

### — LTA Opinion

7.2.15 The LTA believes the maintenance work on the bridges, drainage, culverts and channels over the duration of the contract will be satisfactory, as these structures are not expected to require any heavy maintenance throughout the contract. Inspections may dictate that some minor works such as replacement of the bridge bearings are required, but so long as the general preventative maintenance is carried out adequately all the structures should operate without any risk.

### Signal and Track Control Maintenance

- 7.2.16 Train control and grade crossing equipment, interlocking, and train control communications equipment are maintained in strict compliance with Code of Federal Regulations ("CFR"), Institute of Electrical and Electronics Engineers ("IEEE") and Manual on Uniform Traffic Control Devices ("MUTCD") standards and procedures, as well as state and local codes.
- 7.2.17 This program is designed to address the requirements for supplying safe, service-ready, and reliable signalling apparatus. Inspections will include: -
  - Interlocking inspections of all the signal appliances, including wires, cables, switches, signal lamps, vital and non-vital processors, relays, etc.
  - Crossing inspections so that all the apparatus at highway grade crossings including gate, light, control equipment, instrument house, backup power, etc., and
  - Routine signal inspections for compliance.
- 7.2.18 All inspections and testing activities documentation will be recorded in RailDOCS and labour hours recorded in EAM.
- 7.2.19 Switch machine inspections are undertaken by the Signal Maintainer as detailed in Section 5.4 Frequency and Test Protocols and following any reported malfunctions or an extreme weather event.
- 7.2.20 Maintenance is undertaken as detailed in Section 5.4 Frequency and Test Protocols, as required.
- 7.2.21 The Operator 's routine signalling maintenance is based on periodic inspection/testing at intervals as dictated by the FRA for each type of signal component. The Operator's principal signal objective is to meet all required FRA signal-mandated inspections, analyse data, and avoid failures through a rigorous preventive maintenance program.

Table 7-2 Signalling Maintenance Frequencies

Х				
	х			
		х		
			х	
				Х
	X		x	x

Interlocking/Wayside Equipment				·
Switch Obstruction	Х			
Point Detectors Shunt fouling sections, Wayside Ground Tests, Wayside Ground Tests, IRJs, Bond wires Track Connections,		Х		
Timing Equipment, Interlocking Equipment			х	
Relays				Х
Source: the Operator				

- 7.2.22 The Operator Scheduled Preventive Maintenance Program dictates the preventive maintenance intervals and work scope required to see that the signal and train control system meets or exceeds the expectations of useful life.
- 7.2.23 The preventive maintenance program is derived from OEM maintenance recommendations and performance expectations, which are established at the time of installation and continuously updated to include modifications to improve equipment performance or to reduce operating costs. The Operator 's preventive maintenance program is designed to prevent failures by anticipating the maximum life expectancy of components. The fundamental program consists of time-based inspection and testing programs scheduled in EAM and based on FRA guidelines. The EAM contains a schedule of all preventive maintenance activities and will generate and record the work orders for these maintenance activities and will be the source of the serial component numbers. EAMs will also capture the labour and material costs of each maintenance intervention to aid budgetary control.
- 7.2.24 The Operator's analysis of the requirements for maintenance of the signal and train control system is based on an extensive review of testing and maintenance procedures presently being utilized in the rail industry and in accordance with operation and maintenance manuals.
- 7.2.25 Following is a list of major signal, PTC, and grade crossing equipment and its life expectancy. Due to evolving technologies, it is anticipated that the majority of the equipment listed will represent legacy equipment within ten years.

COMPONENT	LIFE EXPECTANCY (YEARS)	COMPONENT	LIFE EXPECTANCY (YEARS)
Audio Frequency Receiver/Transceiver/Transmitter"	15	Local Control Panel	20
Batteries	5	Non-Vital Relays	10
Battery Chargers	10	OCC Back Office Servers	10
Cab Signal Couplers	10	10 OCC Cad Stations	
Code Rate Generator	15	OCC PTC Interface and GPS Equipment	15
Crossing Controller	15	PTC Radio Equipment with antenna	10
Xing Gate Motor	15	Loop Detector Processor	15
DC/DC Converter	15	Router/Ethernet Switch	10
Digital Voice Recorder	10	SCADA PLC	10
Coded Track Converter	15	Switch Machine	20

Table 7-3 Major Signalling Components

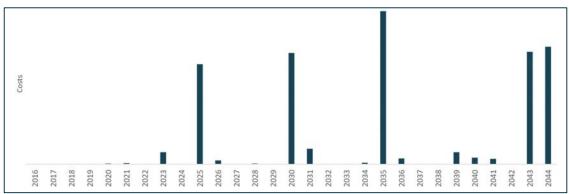
Ethernet Camera	15	Track Transmitter	25
Event Recorder	15	Vital Microprocessor	10
Fibre Patch Panel	10	Vital Relays	25
Impedance Bonds	20	Wayside interface PTC	10
Light out Detectors	10	Wayside Signal	10
Source: the Operator			

Source: the Operator

### — LTA Opinion

7.2.26 The LTA is comfortable that the inspection intervals are consistent with other railway signalling and train control systems. In addition, the replacement schedule for the major composite assets within the system are as expected for a modern signalling system and reflect the timings suggested by major suppliers. The renewal and replacement budget also reflect the peaks of expenditure that this schedule would generate, especially on the 10 and 15 year anniversaries.

Figure 7-3 Renewal Budget Profile for Signalling and Train Control (costs removed for confidentiality purposes)



Source: the Operator

# Communications System

- 7.2.27 The Operator's communications maintenance is based on periodic inspection/testing at intervals as dictated by industry practices and recommended practices for communications components.
- 7.2.28 The Operator Preventive Maintenance Program dictates the preventive maintenance intervals and scope of work required to verify the communications system meets or exceeds the expectations of useful life.

EQUIPMENT	MONTHLY	3 MONTHLY	6 MONTHLY	YEARLY
Equipment	Х	Х	Х	Х
CCTV System	х	х	Х	Х
PAVMS	х	Х	Х	х
Emergency Telephone System	х	Х	Х	х
Wimax	х	Х	Х	х
Communication House	х	х	Х	х
SCADA Remote Terminal Units	х	х	Х	х
Source: the Operator				

Table 7-4 Communication System Test and Inspection Frequency

- 7.2.29 The Operator's maintenance plan is to undertake time-based overhauls of components, carried out based on manufacturers' recommendations and, if necessary, modified on the basis of experience gained over time. Specific equipment inspection and repair tasks and procedures designed for the equipment has been developed. This information will be collected by EAM and will be used for all preventive maintenance activities. The information from each inspection and preventive maintenance action will be entered into EAM, leading to a comprehensive database of equipment maintenance history and activity.
- 7.2.30 The following is a list of major communications equipment and its expected lifecycle. Due to the evolving technologies, it is anticipated that the majority of the equipment listed will represent legacy equipment within ten years.

COMMUNICATIONS EQUIPMENT	LIFE EXPECTANCY (YEARS)
CCTV System	8-10
PAVMS	10
Fibre Optic Cable	15-25
Emergency Telephone System	10
Wimax	8-10
Communication House	5
SCADA Remote Terminal Units	10
Equipment	10-15
Source: the Operator	

Table 7-5 Communications Equipment Life Expectancy

Source: the Operator

#### — LTA Opinion

7.2.31 The LTA is comfortable that the inspection intervals are consistent with other railway communications systems, showing cyclical inspections of different levels of intensity throughout each year. In addition, the replacement schedule for the major composite assets within the system are as expected for a modern communications system and reflect the timings suggested by major suppliers. The renewal and replacement budget also reflect the peaks of expenditure that this schedule would generate, especially on the 10- and 15-year anniversaries.

### **Bridges and Structures**

- Inspections of the bridges is undertaken on at least an annual basis and follow the appropriate state guidelines 7.2.32 and local codes as appropriate.
- 7.2.33 Maintenance of bridges and other structures will typically be carried out by the Operator Track crews on an asrequired basis and, as appropriate, will include:
  - Cleaning out deck drains and culverts, as required;
  - Cleaning bridge seats;
  - Tightening and replacing hardware; and
  - Removing debris from piers.

7.2.34 The Operator will implement major maintenance or overhaul/renewal programmes based on recommendations in the bridge reports. The work will probably be undertaken on a subcontract basis. The Operator Chief Engineer will lead this decision process with the technical support of the railroad bridge engineers and ensure that the requirements are implemented in a timely manner.

#### — LTA Opinion

7.2.35 The LTA believes the maintenance work on the bridges, drainage, culverts and channels over the duration of the contract will be satisfactory, as these structures are not expected to require any heavy maintenance throughout the contract. Inspections may dictate that some minor works such as replacement of the bridge bearings are required, but so long as the general preventative maintenance is carried out adequately all the structures should operate without any material risk.

## **Traction Electrification Systems**

- 7.2.36 The Traction Electrification System ("TES") is divided into two discrete but interlinked systems: -
  - Traction Power Substations ("TPSS"); the DUS Switching Station and associated feeders to trackside gantries; and
  - Overhead Catenary System ("OCS") including all trackside poles/portals, overhead cables and supporting hardware, associated foundations and the line side gantry from feeding stations.
- 7.2.37 The inspection schedule for the inspection of the major components of the OCS is summarised below.

INSPECTION TYPE	BIWEEKLY	BIMONTHLY	QUARTERLY	1 YEARLY	2 YEARS	4 YEARS	SEASONAL
Train Cab Inspection	Х						
Non-Intrusive Ground Level Visual Inspection		Х					
Phase Break Maintenance			Х				
Intrusive High-Level Inspection Maintenance				Х			
Pantograph Test Run				Х			
Section Insulator Maintenance				х			
Contact Wire Diameter Check					х		
Disconnect Switch						х	
Balance Weight Maintenance						х	
Midpoint Maintenance							Х
Source: the Operator							

Table 7-6 OCS Inspection Schedule

#### **Power Distribution System**

7.2.38 Inspection, maintenance, and testing procedures will conform to OEM-specified maintenance intervals and are in strict compliance with federal, state and local regulations. Industry experience, operating environment and conditions, historical data, failure analyses, and reliability are the factors used to determine the need for additional inspection, maintenance and testing frequencies. The following is a list of minimum maintenance frequencies.

COMPONENT / SYSTEM	MONTHLY	QUARTERLY	1 YEARLY	2 YEARS	4 YEARS	5 YEARS	AS NEEDED
Gantry	Х		Х				
25KV Disconnect	Х		Х				
TPSS/SWS	х		х				
25KV Breaker	Х		Х			х	
115KV Breaker	х		х			х	
115KV Disconnect Switch	Х		Х			х	
Battery		Х					
Emergency Lighting		Х					
Protection Devices				Х	Х		
HVAC Unit	х						х
Source: the Operator							

Table 7-7 Power Distribution Inspection and Preventative Maintenance Schedule

7.2.39 It is not anticipated that the TPSS/SWS components, assemblies and controls will need replacing during the life of the project. Should the need arise, the Traction Power Supervisors will develop a specific plan of action. Barring regular operation in an overload condition and with appropriate maintenance and inspection, the 115/25kV traction power transformers will not need replacing during the life of the concession. As equipment and components require replacement, specific renewal plans will be developed and approved by the Chief Engineer.

#### - LTA Opinion

7.2.40 The LTA is satisfied that the inspection and preventative maintenance schedules are in line with common best practice for the power systems. The LTA notes that the budget for this line of inspection and maintenance confirms that the replacement costs are small reflecting the longevity of this type of infrastructure.

#### **Rolling Stock Maintenance Plan**

7.2.41 This Plan follows the recommendations of the vehicle manufacturer, Hyundai Rotem, which, in turn, follows the recommendations of subsystem and component suppliers. These recommendations generally go beyond the requirements of the Federal Railroad Administration (FRA) in terms of the frequency, scope and methods of inspection and maintenance and includes required frequencies for inspection and testing, preventive maintenance and replacement, based on and incorporating all the OEM and component supplier tolerances.

7.2.42 The intervals and primary functions are indicated in the table below. The maintenance program is hierarchical, with each inspection having the content of the next lighter inspection, except for programmed component replacements and rebuilds.

**Table 7-8 Inspection and Intervention Frequencies** 

INTERVAL	COMPONENT/CONTENT	INTERVENTION
Scheduled Inspection, Testing and Maintenance	Body and all systems	Scheduled Inspection, Testing and Maintenance
30 Day	Body and all systems	Scheduled Inspection, Testing and Maintenance
60 days	Automatic Train Control (ATC)	Scheduled Maintenance and Testing
92 days	Operator's Cab telemetry & Control Systems; Monitoring and Diagnostic Systems; Interior Body; Exterior Body; Underfloor, cars, and couplers; Brake Systems; Traction Motors; Pantograph	Scheduled Inspection, Testing and Maintenance
184 days	ATC; Drivers Cab; Vehicle Body; Underfloor, cars, and couplers; brake systems; Traction Motors; Pantograph	Scheduled Maintenance and Testing 49 CFR 238; Check torques; Grease Change filters
1 Year	ATC; Air Brake and pneumatic system; Driver Cab; Vehicle Body; Underfloor, cars, and couplers, brake systems; Traction Motors; Pantograph; Interior and HVAC systems	Scheduled Maintenance and Testing system functionality check cables; and Change oil
3 Year	HVAC; CCTV; Trucks pneumatic suspension; Bump stops; pneumatic brake system; Truck Bearing Housing & wear sleeves & plates; Vertical & horizontal Dampers	First general overhaul – Inspect, replace system components and
5 Year	All systems, trucks and car body	Scheduled inspection and service, with scheduled component renewal
6 Year	Doors; Couplers; Gear units	Scheduled inspection and service, with scheduled component renewal
8 Year	Pantograph	Major overhaul
10 Year	Traction motor	Major overhaul
12 Year	Coupler	Major overhaul
20 Year	Traction Motors - replace Rotor; Train Control System	Major overhaul
30 Year	Passenger Doors	Renew Components

Source: the Operator

#### - LTA Opinion

7.2.43 The LTA is satisfied that the inspection and preventative maintenance schedules are in line with common best practice for inner suburban commuter trains. The LTA notes that the budget for this line of inspection and maintenance confirms that the replacement costs follow the usual 4-5 and 9-10 year cycles of major interventions.

7.2.44 It should be noted that Hyundai is a foreign supplier. Although it is understood that there are sufficient secondary market suppliers within the US, certain components of the supply chain may be sensitive to disruption, also considering potential impacts from the state of international trade relations. This could manifest in price fluctuation during the O&M Phase but is not considered an immediate material risk at the time of this report.

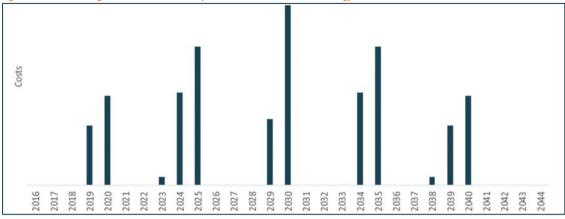


Figure 7-4 Renewal Budget for Rotem Train Fleet (costs are hidden for confidentiality)

Source: the Operator

#### CRMF

7.2.45 The Facility Maintenance Plan describes the Operator's inspection and maintenance program for the CRMF and the stations, including mechanical systems, natural gas systems, plant air systems, plumbing, lighting and electrical systems, emergency equipment and life safety systems, security and access control systems, elevators, parking lots, and workshop equipment. The Plan also addresses cleaning, snow and ice removal.

#### — LTA Opinion

7.2.46 From its review the CMRF is considered a state-of-the-art facility for which an appropriate renewals plan has been developed considering the service life of the individual systems (mechanical, gas, electrical) and the civil works.

#### **7.3 RENEWAL AND HANDBACK PLAN**

- 7.3.1 Paragraph 44.1(a) of the O&M Agreement states that DTP shall, on the Expiry Date, hand over [...] the infrastructure and rolling stock, and tools, etc. [...] to RTD in a condition which:
  - Could reasonably be expected of an equivalent commuter rail system which has been in existence and operated for a period equal to the period during which the relevant Commuter Rail Project has been operated and which has been maintained in accordance with the O&M Standards during that period; and
  - 2. Is capable of complying with the O&M Standards (as amended pursuant to the terms of this Agreement) for a period of not less than three years from the Expiry Date termed collectively as the "Handover and Reinstatement Work Requirements"
- 7.3.2 The maintenance or other work of renewal, reconstruction, repair or reinstatement to be carried out in order to satisfy the Handover and Reinstatement Work Requirements is termed the "Reinstatement Work", which shall not include those elements which RTD has agreed to defer.
- 7.3.3 The penalty for failing to meet the Handover Requirements will allow DTP to make deductions from the Monthly Operator's Fee.

7.3.4 If the Handover and Reinstatement Work Procedures are not completed in any material respect by the Concession Expiry Date as a result of an act or omission of the Operator then the Operator shall operate and maintain these Components until the handover is completed without being entitled to payment of any Monthly Operator's Fee.

#### — LTA Opinion

- 7.3.5 These Handover and Reinstatement Work Requirements would appear to be reasonable and therefore comparatively benign, dependent upon several assumptions being correct:
  - That during those three years, beyond the end of the Concession, the new Operator maintains and continues to undertake the necessary renewal/replacement plans as carried out by the Operator previously;
  - That the Operator adheres to its O&M Plans;
  - That the Operator implements its plans to undertake a series of 'Look Forward' reviews at strategic milestones throughout the contract to assess the capability of the infrastructure to meet the Handover Requirements; and
  - That such Look Forward reviews include an independent engineer or LTA to undertake high level condition surveys of the assets as part of these reviews.
- 7.3.6 From its experience with Fluor and BBR in many other projects in Europe and North America, where the LTA observed their corporate ethos of producing high quality engineering solutions, the LTA is comfortable that the Operator will satisfactorily manage the assets throughout their designed life in order that they will meet the Handover Requirements. Additionally, the LTA notes the increase expenditure in the replacement budget during the last four years of the O&M Phase, which will also aid the meeting of the Handover Requirements.
- 7.3.7 The LTA is of the opinion that the current partners in Operator will follow its O&M Plan throughout the duration of the project, which will ensure that the infrastructure will be kept in a condition that will enable the Handover Requirements to be met in a planned and controlled manner.
- 7.3.8 The LTA has reviewed the OSM plans for the maintenance and renewal proposals for all the fixed and moving infrastructure and is comfortable with the Operator's approach to looking after the assets by ensuring a continuous regime of monitoring, inspection, data recording, analysis, and implementation of predictive renewal and replacement. The LTA is reassured to see the Operator using one of the world-renowned asset maintenance data bases, Enterprise Asset Management System (EAM). The LTA has not had any direct hands on experience operating EAM, but has used a very similar software package on several projects and has therefore been able to benefit from a number of technical discussions with EAM operators concerning the relative benefits of the two systems. The LTA is confident that EAM is the correct tool for this project and, in discussions with Operator's senior management is comfortable that it will use EAM to enhance its OSM capabilities. In the LTA's experience, two great advantages of these types of data bases is that:
  - 1. they provide a full maintenance and renewal history of every asset; and
  - 2. they enable analysis of wear and tear across all assets which in turn helps to support the timings of predictive maintenance and renewal. For instance, the periodic measurement of rail head dimensions along the route will provide a rate of wear that, when projected forward, will give a more accurate timing for rail replacement.
- 7.3.9 In its discussions with the Operator's personnel, the LTA is comfortable that it will be using the full capabilities of EAM in all its maintenance activities, which includes the rostering of staff as well as the advanced ordering of parts.

## 8 ENVIRONMENTAL MANAGEMENT

## 8.1 STATUS OF PERMITS

8.1.1 Based on the information provided by DTP, the LTA notes that no further permits are required.

#### **Review of Any Other Issues**

- 8.1.2 The LTA notes DTP has been regularly updating a Mitigation Measures Progress Report which comprises a thorough follow up on the environmental mitigation measures at every stage of the project (design, construction, and operation) specific per line. The latest version available is dated in May 2019.
- 8.1.3 The LTA has also reviewed the latest Environmental Condition Clean-up reporting incident records (March 2020) and opines there is no relevant incidents recorded.
- 8.1.4 The Operator's environmental management team has particular focus on waste management (hazardous and non-hazardous material management) natural resource conservation, training and enforcement through inspections and audits.
- 8.1.5 Based on the information review, the LTA understands that there are no outstanding or known contamination or hazardous materials issues for the Project.

#### **8.2 EQUATOR PRINCIPLES REVIEW**

8.2.1 The LTA has conducted an appraisal of the scheme against compliance with the 10 Equator Principles ("EPs") dated July 2020. The EP are a set of standards for determining, assessing and managing social and environmental risk in project financing for, among others, new projects and their refinancing across the globe with a total project capital cost of US\$ 10m or more across all industry sectors.

	PRINCIPLES	SUMMARY OF THE PRINCIPLE	LTA REVIEW
1	Review and Categorisation	When a Project is proposed for financing, the Equator Principle Financial Institutions ("EPFIs") will, as part of its internal environmental and social review and due diligence, categorise the Project based on the magnitude of potential environmental and social risks and impacts, Such categorisation is based on the International Finance Corporation's ("IFC") environmental and social categorisation process.	Based upon the information provided by DTP, the Project is considered to fall in Category B. This categorisation is consistent with that allocated to other railway projects. Category B means that the Project is "with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures".
2	Env. & Social Assessment	For all Category A and B Projects, the EPFI will require the client to conduct an appropriate Assessment process to address, to the EPFI's satisfaction, the relevant environmental and social risks and scale of impacts of the proposed Project. The Assessment Documentation should propose measures to minimise, mitigate, and compensate for risks and impacts to workers, affected communities, and the environment, in a manner relevant and appropriate to the nature and scale of the proposed Project.	During procurement, RTD published a Final Environmental Impact Statement ("FEIS") for each line of the Project in compliance with the policies and procedures under the National Environmental Policy Act ("NEPA") and in accordance with the Council on Environmental Quality Regulation and the joint Federal Transit Administration and the Federal Highway Administration regulations. After the project award and prior to the works commencement, DTP prepared a Construction Mitigation Plan which included a thorough examination of all possible adverse impacts

**Table 8-1 Equator Principles Review** 

The Assessment Documentation will be an					
adequate, accurate and objective evaluation					
and presentation of the environmental and					
social risks and impacts. For Category A and, as					
appropriate, Category B Projects, the					
Assessment Documentation includes an					
Environmental and Social Impact Assessment					
("ESIA").					

The Assessment process should, in the first

instance, address compliance with relevant

resulting from the Project's implementation. DTP had in place a team responsible to coordinate the environmental compliance of the Project including policy, planning, implementation and operation, monitoring, and corrective action. The Construction Mitigation Plan also included an Environmental Training Programme for all workers and third parties in general environmental policies as well as specific requirements related to the workers responsibilities.

During construction DTP also prepared a Construction Management Plan ("CMP") which included construction procedures focused on protecting the environment and highlighted the applicable environmental requirements and the development of procedures designed to minimize adverse impact on surrounding communities.

This provides comfort that the environmental and social impacts of the Project have been thoroughly assessed.

The LTA is satisfied that DTP has complied with the policies and procedures under the National Environmental Policy Act; and with the Council on ions and the joint /Federal Highway

3	Applicable Env. and Social Standards	host country laws, regulations and permits that pertain to environmental and social issues. The EPFI will require that the Assessment process evaluates compliance with the applicable standards. For Projects located in Designated Countries, the Assessment process evaluates compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues.	Environmental Policy Act; and with the Council on Environmental Quality regulations and the joint Federal Transit Administration/Federal Highway Administration regulations
4	Env. & Social Management System and Equator Principles Action Plan	For all Category A and Category B Projects, the EPFI will require the client to develop and/or maintain an Environmental and Social Management System ("ESMS"). Further, an Environmental and Social Management Plan ("ESMP") will be prepared by the client to address issues raised in the Assessment process and incorporate actions required to comply with the applicable standards. Where the applicable standards are not met to the EPFI's satisfaction, the client and the EPFI will agree to an Equator Principles Action Plan ("EPAP").	The LTA is satisfied with DTP's compliance with the requirements defined in the Concession Agreement and in conformance with RTD requirements during construction phase. With the Revenue Service Commencement for the A line in 2016, RTD issued notice that no further Sustainability Reports were needed. In addition, the LTA notes that the Enterprise Asset Management System used by the Operator allows to record inspections, tests, permits, and maintenance tasks required by environmental regulations. However, the LTA would consider it best practice that DTP continue to evaluate its own performance in terms of sustainability and to continue reporting in line with those targets set out in the sustainability plan, in order to ensure total compliance against this principle.
5	Stakeholder Engagement	For all Category A and Category B Projects, the EPFI require the Borrower to demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where relevant, Other Stakeholders. For Projects with potentially significant adverse impacts on Affected Communities, the client will	Considering the Project is in O&M Phase, DTP and the Operator are engaging with local communities to resource their staff needs locally. DTP and the Operator have made training available to new joiners to guarantee the adequate adaptation to the Project's need and fill in potential skill gaps. It is worth mentioning that, in line with common practice in this type of projects, during design and

conduct an Informed Consultation and

Participation process. The client will tailor its

consultation process to: the risks and impacts of

the Project; the Project's phase of development;

line with common during design and construction phase, the primary responsibility of proactive stakeholder engagement was with the Authority (RTD), who undertook an extensive consultation with affected stakeholder groups as

		the language preferences of the Affected Communities; their decision-making processes; and the needs of disadvantaged and vulnerable groups. This process should be free from external manipulation, interference, coercion and intimidation	part of the development of the Project feasibility. The requirements bestowed upon DTP with regards to stakeholder engagement included efforts to engage the community and local stakeholders during the Construction works, affording them the opportunity to provide input.
6	Grievance Mechanism	For all Category A and, as appropriate, Category B Projects, the EPFI will require the client, as part of the ESMS, to establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the Project's environmental and social performance."	During the Design-Build phase, the Environmental Consultant, Kleinfelder, monitored compliance and performance of the Project's environmental requirements. Evidence has been provided that stakeholders were consulted around the local impacts presented by the Project such as aesthetic, air quality and noise. In addition, both DTP and RTD can be contacted through their respective websites by users and stakeholders, with the latter entity also offering participation in meetings and other mediums of contact.
7	Independent Review	For all Category A and, as appropriate, Category B Projects, an Independent Environmental and Social Consultant, not directly associated with the client, will carry out an Independent Review of the Assessment Documentation including the ESMPs, the ESMS, and the Stakeholder Engagement process documentation in order to assist the EPFI's due diligence, and assess Equator Principles compliance.	The Project had an independent Technical Advisor/ Environmental Consultant who independently reviewed the environmental related documents and rated the Project accordingly. In addition, the LTA is reviewing the Project's compliance with the Equators Principles. On this basis, the LTA is of the opinion that this principle is met.
8	Covenants	For all Projects, where a client is not in compliance with its environmental and social covenants, the EPFI will work with the client on remedial actions to bring the Project back into compliance. If the client fails to re-establish compliance within an agreed grace period, the EPFI reserves the right to exercise remedies, including calling an event of default, as considered appropriate. For all projects, the client will covenant in the financing documentation to comply with all relevant host country environmental and social laws, regulations and permits in all material respects".	This principle is considered fulfilled as the Project is in environmental and social compliance with all the relevant environmental and social laws regulation and permits.
9	Independent Monitoring and Reporting	To assess Project compliance with the Equator Principles and ensure ongoing monitoring and reporting after Financial Close and over the life of the Ioan, the EPFI will, for all Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI	The LTA takes comfort that during the construction phase, an independent Environmental Consultant has monitored the compliance and performance of the Project's environmental requirements. The Independent Environmental Consultant would issue corrective action reports when required for implementation on the project and quarterly Environmental Mitigation reports (latest dated on May 2020).
10	Reporting and Transparency	For all Category A and, as appropriate, Category B Projects: the client will ensure that, at a minimum, a summary of the ESIA is accessible and available online; The client will publicly report GHG emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for Projects emitting over	The environmental documents, such as the EIS are publicly available on the RTD website. The GHG emissions of the Project are less than 100,000 tonnes per year.

100,000 tonnes of CO2 equivalent annually. The EPFI will report publicly, at least annually, on transactions that have reached Financial Close and on its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations. The EPFI will report according to the minimum reporting requirements detailed in Annex B.

Source: LTA.

## 8.3 LTA OPINION

- 8.3.1 The LTA notes that environmental risks on the Project are considerably mitigated considering the Construction Phase has finished and the Project is in operation. At this stage and based on the information received by DTP, the LTA considers all environmental and permit related aspects of the Project have been managed adequately and in line with standard industry practices. The LTA takes comfort that no further permits are required.
- 8.3.2 Based on the information provided by DTP, the LTA is generally satisfied with the Project's compliance with the Equator Principles. However, the LTA is unable to verify total compliance with Principles 4 given that DTP currently does not continue to report against its sustainability targets. In order to ensure total compliance against this principle, DTP would have to resume reporting against its sustainability targets and overall emissions, even though RTD directed the removal of the requirement to do so.
- 8.3.3 In addition, the Project is located in an Organisation for Economic Cooperation and Development ("OECD") country with robust environmental and social governance, legislation systems and institutional capacity designed to protect their people and the natural environment. The Project's compliance with the local permitting regime is considered to support the compliance with the Equator Principles.

### 9.1 INTRODUCTION

- 9.1.1 This section provides an overview of the Payment Mechanism and the aspects that might impact DTP's remuneration.
- 9.1.2 Pursuant to the Concession Agreement, during the Construction Phase, DTP has received monthly payments (subject to certain annual and aggregate caps) from RTD until each line's RSCD (Revenue Service Commencement Date) reception. Considering that the three commuter lines of the Project have already reached their respective RSCD, the LTA is focusing its analysis on the OSM Phase Payments.
- 9.1.3 Clause 30 of the Concession Agreement "Service Payments" and its Appendix 11 "Service Payments" provide detail of the O&M Phase Payment Mechanism which is availability-based. The O&M Phase for the first two lines of the Project (East Corridor, NWES) started in 2016, therefore this section presents real information provided by DTP and the Operator, which has allowed the LTA to base its analysis on actual data.
- 9.1.4 A deduction analysis has been undertaken to assess expectable levels of deductions, as well as the severity of termination triggers in the Concession and O&M Agreements respectively.

## 9.2 PAYMENTS DURING OSM PHASE

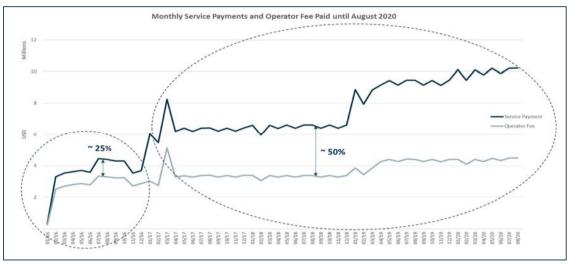
- 9.2.1 The availability payment mechanism is similar to other commuter railway payment mechanism structures seen elsewhere, and has its emphasis placed on maintaining a good user experience in respect of adhering to timetable, compliance with O&M standards and availability.
- 9.2.2 Payments during the O&M Phase (Monthly Service Payments) are broken down into three components: (i) Availability-Adjusted Base Service Payments; (ii) Performance Deductions; and (iii) Special Events Adjustments. In turn, the Monthly Service Payments payable are comprised of two components: the Appropriated Service Payment which corresponds to the Service Payment payable during the O&M Phase to cover operations and maintenance of the Project; and the TABOR Secure Payment which corresponds to cover the debt service without being subject to appropriations.
- 9.2.3 For a detailed description of the payment mechanism during the O&M Phase including the availability-based and performance-based adjustment provision defined in the Concession and O&M Agreements, please refer to Appendix A of this report.

### 9.3 PAYMENTS AND ADJUSTMENTS RECEIVED TO DATE

- 9.3.1 Bearing in mind that the first two commuter lines of the Project started operations in 2016, DTP and the Operator have actual data, gathering valuable information in terms of (i) payments received by DTP and the Operator; and (ii) adjustments (deductions or additions) as a result of the Availability Factor values achieved and Performance Deductions applied during this period.
- 9.3.2 Between Jan 2016 and August 2020, the Monthly Service Payments received by DTP has been equal to \$386.3mill, whilst the Operator Fee received by the Operator \$220.4mill.
- 9.3.3 The Operator Fee paid until August 2020 is split into (i) O&M Payments (89.8%) equal to approx. \$198mill; and
  (ii) Renewals (10.2%) equal to approx. \$22.4mill.

# 9.3.4 The following figure summarises the evolution of these payments since the beginning of operations until August 2020:

Figure 9-1 Evolution of Monthly Service Payments and Operator Fee until August 2020



Source: LTA. Data: DTP/the Operator

- 9.3.5 The LTA notes a drop in the ratio between Monthly Service Payment and Operator Fee of approximately 25% in January 2017 (from a ratio equal to 25% prior to this date to 50% after). This is mainly due to an increase in the Monthly Service Payment linked to the change from the pre-operation payment to the payments during operation.
- 9.3.6 On the other hand, the Monthly Service Payments received are divided into TABOR Secured Payments (SP<sub>T,mn</sub>) equal to \$151.4mill (39.2%) and Appropriated Service Payments (SP<sub>A,mn</sub>)equal to \$234.9mill (60.8%) (values received until August 2020).

#### **9.4 PAYMENT PROFILE**

9.4.1 The following figure provides a summary of the Service Payment profile per year throughout the O&M phase of the Project (with the light blue columns representing the amount of the Monthly Service Payment received by the DTP until August 2020).

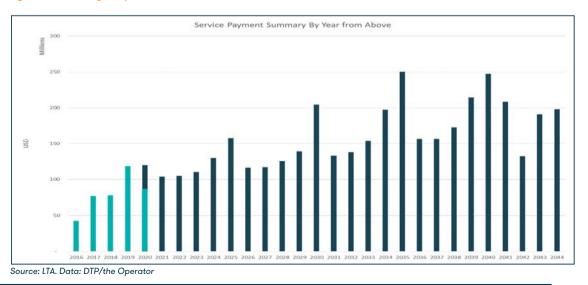


Figure 9-2 Service Payment profile

- 9.4.2 Starting in 2020, the LTA notes a peak in the Monthly Service Payment amounts every 5 years, mainly because of the Renewals component planned for these years (2020, 2025, 2030, 2035 and 2040).
- 9.4.3 The following figure shows the Operator's Fee profile per year throughout the O&M phase of the Project broken down into (i) Operations and Maintenance; and (ii) Renewals. Worth mentioning that figures are up to date for the inflation adjustment until 2020. For all years after 2020, they are in 2020 dollars:



#### Figure 9-3 Operator Fee profile

Source: LTA. Data: DTP/the Operator

#### 9.5 DEDUCTIONS PERFORMANCE TO DATE

- 9.5.1 As previously seen, the Monthly Service Payments are adjusted by (i) Availability Factor and (ii) Performance Deductions; and (iii) Special Events Adjustment which, when applicable, which may reduce and/or increase the payments received by DTP and the Operator.
- 9.5.2 The following figure provides a summary of the Availability Rates and the Availability Factors obtained from the beginning of the O&M Phase until September 2020.

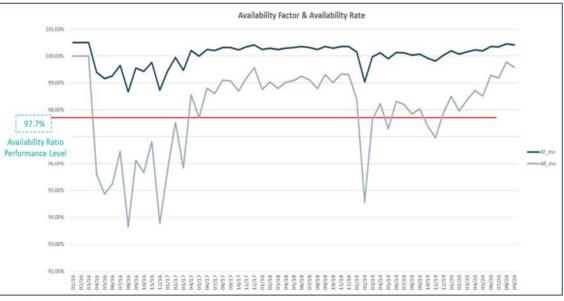


Figure 9-4 Availability Factor & Availability Rate values obtained

Source: LTA. Data: DTP/the Operator

- 9.5.3 With the exception from the first quarter when revenue demonstration tests took place, 2016 (and the first quarter of 2017) had an initial bedding-in period due to Construction Phase defects (among others level crossings, gate issues and level crossing warnings) resulting in Availability Ratio values below 97.7%.
- 9.5.4 Following this initial period, since January 2017 till September 2020, the Availability Factor applied to the Base Service Payment has been at or above 99% in every period.
- 9.5.5 However, it is worth mentioning an Availability Factor drop in February 2019 (AR=94.6%) as a result of theft of copper grounding wires at a communication house location without being detected; and an Availability Factor drop (AR=97%) in December 2019 as a result of the impacts of a required radio software upgrade.
- 9.5.6 Breaking down the Availability Ratio in its components (i) Rolling Stock weighted 50%; (ii) On-Time Availability weighted 33.3%; and Station Availability weighted 17.7% the following figures shows the relevance that each component has in the Availability Factor values:



Figure 9-5 Availability Ratio Components and their relation with the Availability Factor until September 2020

Source: LTA. Data: DTP/the Operator

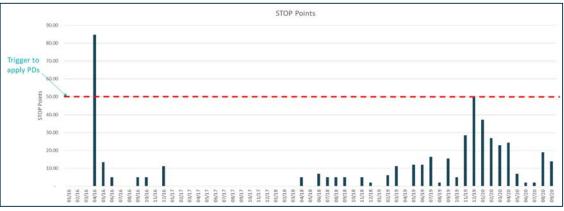
9.5.7 Among the explanation as to the periods with poor performance (mostly linked to the first 12 months of operation), the LTA notes that these are related to specific defined-duration events. The following table provides a summary of the most relevant events which have led to poor performance sharp dips:

Table 9-1 Summary of the most relevant events leading to poor performance peaks

EVENT	WHEN	DURATION
Crossing warning protection delays	June 2016	< 1month
Damage to Overhead Catenary System ("OCS")	August 2016	< 1month
Crossing warning protection delays	October 2016	< 1month
Broken rail causing false occupancy Multiple power and equipment failures	December 2016	< 1month
Crossing warning protection and propulsion issues	March 2017	< 1month
Theft of copper grounding wires at communication house location	February 2019	< 1month
Source: LTA. Data: DTP/the Operator		

9.5.8 The following figure shows the number of STOP Points accrued in each month since the start of operations until September 2020:

Figure 9-6 STOP Points accrued since the start of operations until September 2020



Source: LTA. Data: DTP/the Operator

- 9.5.9 As mentioned earlier in this report, STOP Points only result in payment deductions to the extent that they exceed 50 in a month. According to the above figure, this has only occurred once (associated to the initial bedding-in period) from the commencement of operations until September 2020. Also, there has been 1 month (Dec 2019) on which the threshold of 50 STOP has been reached mainly as a result of elevator issues at one of the stations and heavy snowstorm events occurring this month.
- 9.5.10 The following figure summarises the payment adjustments received by DTP (associated exclusively to the Availability Factor) between Jan 2016 and September 2020:

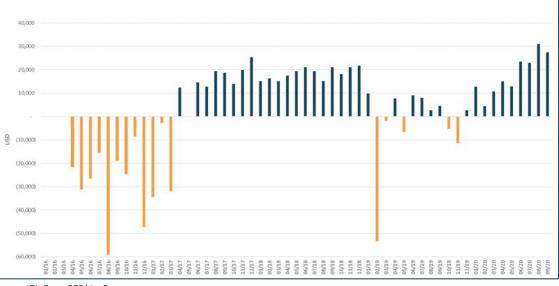
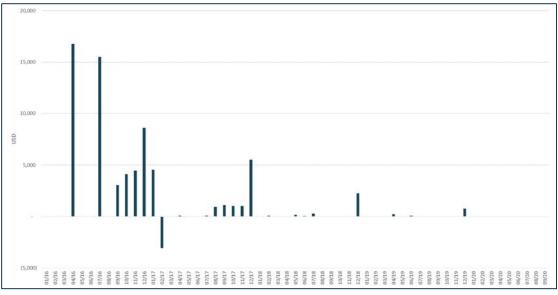


Figure 9-7 Deductions / Bonus related to the Availability Factor



9.5.11 The following figure summarises the payment adjustments received by DTP (associated exclusively to the Special Events Adjustments between Jan 2016 and September 2020 such as sport events, music concerts, local holidays/celebrations etc.):





Source: LTA. Data: DTP/the Operator

9.5.12 Factoring in the adjustments related to performance and Special Events Adjustments, from April 2016 until September 2020, the bonuses received by DTP have outweighed the deductions. The following table summarises the various adjustments (deductions/bonuses) received by DTP during this period:

ADJUSTMENT	AMOUNT (USD)	COMMENTS
Availability Factor (Bonuses)	562,502	36 months with bonus out of 57 months $\!\!\!\!\!\!^\star$
Availability Factor (Deductions)	-401,578	17 months with deductions out of 57 months*
Special Events Adjustments (Bonuses)	67,643	23 months with bonuses out of 57 months
Performance Deductions	-3,602	1 month out of 57 months
TOTAL	224,965	n/a

Table 9-2 Adjustments (deductions/bonuses) received by DTP between April 2016 and September 2020

\* There are 3 months with neither availability factor bonus nor deductions. These months correspond mostly to January – March 2016 corresponding to the Revenue Demonstration Test period.

Source: LTA. Data: DTP/the Operator

- 9.5.13 It is worth mentioning that, in the calculation of the Monthly Service Payment, there are other adjustments (not subject to performance) which for the period (Jan 2016/September 2020) have accounted for USD21.1mill. These adjustments correspond mainly to (i) Modification Order Request ("MoR") 139 on Crew Size Adjustments by the FRA; and (ii) MoR 140 for the additional 6 married pairs vehicles for the North Metro.
- 9.5.14 Furthermore, as mentioned in 3.5.6 of this report, RTD has expressed that "RTD will not withhold service payment for the reduced service on the B & G CR Lines." Therefore, any impacts to the Availability Ratio and Availability Factors as a result of Covid-19 are thus far excused.

### **9.6 SERVICE PERFORMANCE DEDUCTION MECHANISM - LTA ANALYSIS**

### **Analysis Methodology**

- 9.6.1 This analysis is designed to provide an independent assessment of the levels of deductions that could reasonably be incurred by DTP/the Operator during the O&M Phase as a result of their failure to satisfy the specified performance standards, and/or not meeting the availability standards under a set of given scenarios.
- 9.6.2 The LTA has undertaken its own analysis based on a (i) probable case; (ii) optimistic case; (iii) pessimistic case; and (iv) stress case scenario (for both DTP and the Operator) assessment against each STO category.
- 9.6.3 The above-mentioned case scenarios can be divided into two groups. The first is a more realistic set of scenarios based on actual data gathered by DTP/the Operator during the 4+ years the Project has been in operation among which are the probable, optimistic and pessimistic cases. The second is a more theoretical set of scenarios aimed at assessing the severity of the termination triggers under the Concession and O&M Agreements and their potential deductions.

## Sensitivity Analysis (O&M Phase)

- 9.6.4 To test the sensitivity of the performance regime during the O&M Phase, the LTA has studied several different event scenarios with certain degree of occurrence that would trigger the Operator to earn STOP Points. Among these are: (i) total/partial system shutdowns; (ii) station total/partial closures; (iii) track outages for different periods of time; and (iv) total/partial unavailability of subcontractor crews.
- 9.6.5 In addition to the actual data gathered during the O&M Phase, the LTA has leaned on the contract termination provisions included in the Concession and O&M Agreements to determine the Availability Rate for each of the case scenarios. The following table summarises the termination provisions of each of the contracts:

TERMINATION OF THE CA	TERMINATION OF THE OSM
AR <80% in 2 or more months	AR <89% in 5 or more calendar months of any rolling 7-
AR <85% in 6 or more months of any 8-month period.	month period.
PD >3% in 6 or more months of any 8-month period.	PD>2.9% in five or more months on any 7-month period.
Source: Concession Agreement	

Table 9-3 Termination provisions of each of the contracts

9.6.6 The following table summarises the assumptions taken by the LTA to define each of the case scenarios, and the AR values assumed:

Table 9-4 Definition of case scenarios and availability assumptions made by the LTA

CASE SCENARIO	ASSUMPTIONS	AVAILABILITY RATE**
REALISTIC SET OF	- SCENARIOS	
Probable	<ul> <li>AR average values starting from Jan 2017 until June 2020 (2016's values are considered not representative of a probable scenario as they represent the typical ramp up behaviour of the beginning of the O&amp;M Phase)</li> </ul>	98.30%
Optimistic	<ul> <li>AR average values in 2018 which are representative of a year with the Project receiving bonus every month (AF above 100%).</li> </ul>	99.10%
Pessimistic	<ul> <li>AR values on the worst period during operation to date (August 2016).</li> <li>The LTA considers this is an unlikely case scenario.</li> </ul>	93.66%
THEORETICAL STR	RESS CASE SCENARIOS	
Stress Case for the Operator	<ul> <li>AR values that would bring the Operator to be terminated.</li> <li>The LTA considers this is a very unlikely case scenario.</li> </ul>	89%*
Stress Case for DTP – 1	<ul> <li>AR values that would bring DTP to be terminated.</li> <li>The LTA considers this is a very unlikely case scenario.</li> </ul>	85%*

Stress Case for	0	AR values that would bring DTP to be terminated.	80%*
DTP - 2	0	The LTA considers this is a very unlikely case scenario.	00%

\* In order the Operator to be terminated the Availability Rate values have to maintained over an extended duration of time. For further detailed information please refer to Table 11.1-2 in Appendix A of this report.

\*\* It is worth mentioning that AR changes have no effect to DTP's revenue as they are pass through to the Operator fee. For further detail please see Table 3-6 of this report.

Source: LTA. Data: DTP/the Operator

# 9.6.7 To determine the STOP Points for each of the case scenarios. The LTA has used a series of assumptions which are summarise in the following table:

Table 9-5 Definition of case scenarios and performance assumptions made by the LTA

CASE SCENARIO	ASSUMPTIONS	STOP POINTS
REALISTIC SET OF	SCENARIOS	
Probable	<ul> <li>The initial response included in the remedy time has been met;</li> <li>Leaning on the actual information gathered during the O&amp;M Phase, with only one month out of the 57 recorded with STOP Points above 50, the LTA has assumed that potential STOP Points earned on a probable case scenario will be below 50, and consequently no performance deductions will apply.</li> </ul>	<50
Optimistic	<ul> <li>Leaning on the actual information gathered during the O&amp;M Phase, with approximately 2/3 of the months recorded with STOP Points below 5, the LTA has assumed that no STOP Points would be earned on an optimistic case scenario and consequently no performance deductions will apply.</li> </ul>	0
Pessimistic	<ul> <li>The initial response included in the remedy time has not been met;</li> <li>None of the STOs is remedied within the remedy time, but all of them are remedied within the first 12-hour period after the remedy time (assumed as 2 non-complete shifts);</li> <li>The LTA assumes 1 station and 2 cars not performing at a time;</li> <li>The LTA considers this is an unlikely case scenario.</li> </ul>	153.5
THEORETICAL STR	RESS CASE SCENARIOS	
Stress Case for the Operator	<ul> <li>The initial response included in the remedy time has not been met;</li> <li>None of the STOs is remedied within the remedy time; with some of the STOs being</li> </ul>	
Stress Case for DTP – 1	remedied within the first 12-hour period (assumed as 2 non-complete shifts); and some within the second 12-hours period after the remedy time (assumed as 3 non-complete shifts);	261.5
Stress Case for DTP – 2	<ul> <li>The LTA assumes 2 stations and 2 cars not performing at a time;</li> <li>The LTA considers this is a very unlikely case scenario.</li> </ul>	
* To terminate the O	GM Agreement, PDs have to be >2.9% in 5 or more months on any 7-month period. (238 points in one mont	h). * To

\* To terminate the O&M Agreement, PDs have to be >2.9% in 5 or more months on any 7-month period. (238 points in one month).
 \* To terminate the Concession Agreement, PDs have to be >3% in 6 or more months of any 8-month period. (241 points in one month).
 Source: LTA. Data: DTP/the Operator

- 9.6.8 To determine the material loss of the deductions, the analysis has taken an Annual Service Payment of \$119.9mill payable to DTP; and an Operator Fee of \$52.3 mill payable to the Operator which correspond to the amounts included in the Concession Agreement (in 2020 USD).
- 9.6.9 Bearing in mind that the LTA has based its assumptions (i) for the probable, optimistic and pessimistic case scenarios on actual data (more realistic scenarios), and (ii) for the stress case scenarios on the termination triggers under the Concession and O&M Agreements and their potential deductions (more theoretical scenarios); the below table summarises the different range of scenarios generated by the LTA analysis.

Table 9-6 Probable, Optimistic, Pessimistic and Stress Case Regime Scenarios

	REALI	STIC SET OF SC	ENARIOS	THEORETICAL STRESS CASE SCENARIOS		
CASE SCENARIO	PROBABLE	OPTIMISTIC	PESSIMISTIC	STRESS CASE (OPERATOR)	STRESS CASE DTP – 1	STRESS CASE DTP – 2

Availability Ratio	98.30%	99.10%	93.66%	89.0%	80.0%	85.0%
Availability Factor	100.14%	100.32%	98.62%	88.73%	81.38%	82.93%
Performance Deduction	0.00%	0.00%	1.24%	3.90%	3.90%	3.90%
Service Payment Adjustment	\$167,970	\$383,931	-\$3,143,440	-\$18,200,756*	-\$27,019,184**	-\$25,159,516***
% of DTP Annual Payment	0.14%	0.32%	-2.62%	-15.17%	-22.52%	-20.97%
% of the Operator Annual Payment	0.32%	0.73%	-6.00%	-34.74%	-51.57%	-48.02%

\* Please note that this value corresponds to 89% of an entire year, rather than 5 of the 7 months within a given period.

 $^{\star\star}$  Please note that this value corresponds to 80% of an entire year, rather than in 2 consecutive months.

\*\*\* Please note that this value corresponds to 85% of an entire year, rather than 6 of the 8 months within a given period.

Source: LTA. Data: DTP/the Operator

Availability Termination Triggers

- 9.6.10 In its analysis, the LTA has delved into the thresholds required for the Concession O&M Agreements to be terminated due to availability.
- 9.6.11 Based upon the actual data, the LTA notes that Station Availability factor (SA) has been 100% during every month since the commencement of the O&M Phase. Consequently, assuming the SA fixed at 100%, the termination triggers depend on the On-Time Availability factor (OTA); and the Rolling Stock Availability (RSA) values.
- 9.6.12 Looking at the behaviour of these factors during the first year of the O&M Phase (2016) the LTA has calculated the values of OTA and RSA in order to reach an AR of 89% (which would trigger the O&M Agreement termination if extended for a determined period of time):

AR FACTOR	WEIGHT	CALCULATED VALUES
RSA	50%	88.5%
ΑΤΟ	33%	84.1%
SA	17%	100.00%*
AR	-	89.00%

Table 9-7 Availability related values triggering OSM Agreement termination

Note: in order to reach an 89% of the AR, RSA and OTA calculated values have to be as defined in this table simultaneously.

\*Assumed by the LTA

Source: LTA. Data: DTP/the Operator

9.6.13 The following table compiles the number of non-compliant cars that have to run in one day per line in order to reach the RSA and OTA values that would trigger termination.

Table 9-8 Number of non-compliant cars that would trigger O&M Agreement termination

	EAST CORRIDOR	NWES	GOLD LINE
Total trips per day*	144	36	82
Number of trips with at least one non-compliant car per day**	20	8	18
% of trips with at least one non-compliant car per day	14%	23%	22%

\* Includes both travel directions (eastbound / westbound) on an average weekday (Mon - Thurs).

\*\* Factoring in the fact that East Corridor runs as double married pairs (4 cars in one train) and NWES Corridor and Gold Line run as single married pairs trains (2 cars in one train). The number of trips with all out Non-compliant cars would be East Corridor 5; NWES 4; Gold Line 9.

Source: LTA. Data: DTP/the Operator

9.6.14 The following table compiles the percentage of trains that have to depart/arrive late in one day per line in order to reach the RSA and OTA values that would trigger termination.

Table 9-9 Number and % of delayed trains that would trigger OSM Agreement termination

	EAST CORRIDOR	NWES	GOLD LINE
No. times/day a train stops by stations on which the Operator are subject to incur on OTA*	576	108	246
No. times/day a train has departed before the scheduled time; or Departed/ Arrived with a delay >= 5min **	69	23	46
% of the No. times/day a train has departed before the scheduled time; or Departed/ Arrived with a delay >= 5min	11.9%	21.2%	18.6%
No. times/day a train has departed before the scheduled time; or Departed/ Arrived with a delay >= 15min or 1 headway **	7	2	5
% of the No. times/day a train has departed before the scheduled time; or Departed/ Arrived with a delay >= 15min or 1 headway	1.2%	2.1%	1.9%

\* Considering Terminal Time Point: DUS, Ward, South Westminster, DIA; and Designated Intermediate Time Point: Central Park, 40<sup>th</sup>/Airport and Pecos as the stations on which the Operator is subject to incur in OTAs.

\*\* Rounded to the nearest unit.

Source: LTA. Data: DTP/the Operator

9.6.15 It is worth clarifying that the above analysis has been made based under the assumption that both RSA and OTA reach simultaneously the calculated values (included in the Table 9.6-5) which would trigger the termination of the OEM Agreement. In other words, this is a combined case on which all the conditioning factors i.e. non-compliant cars and delayed train departures have to happen simultaneously.

### 9.7 LTA OPINION

- 9.7.1 The LTA notes the overall reasonableness of the payment mechanism during the O&M Phase of the Project and deems it relatively benign. This has been evident for example in months where there has been a sharp dip in a single KPI (on time availability and/or rolling stock availability) and the resulting impact to the overall Availability Factor and associated deductions from the Monthly Service Payment has relatively been absorbed. In turn, these deductions are passed through to the Operator through Operator Fee reductions which provides protection to DTP.
- 9.7.2 The LTA considers that in terms of performance STOP Points system allows for reasonable rectification periods prior to points being accrued. This is reinforced by the fact that the Operator has only surpassed the 50 STOP Points that lead to performance deductions in in one month out of 57 months recorded.
- 9.7.3 Likewise, in terms of availability the LTA notes the payment mechanism provides reasonable defect remedy periods. For instance: regarding Rolling Stock Availability, the Concession Agreement allows for reasonable defect remedy period prior to a car becoming counted as a non-compliant car.

- 9.7.4 Similarly, the measurement of On-Time Availability contains appropriate list of Delay Event Exclusions, meaning DTP is not responsible for missed schedule due to certain external factors. Additionally, the On-Time Availability KPI excludes trains that are subject to a Car Downtime Event, meaning that there is no double counting between the Rolling Stock Availability and the On-Time Availability. In addition, based on the LTA's deduction analysis, the assessed non-compliances provide adequate headroom to a termination event.
- 9.7.5 The LTA considers the termination provisions, as a result of availability and/or performance defaults, to provide adequate headroom between the Concession and O&M Agreements. However, it is worth mentioning the non-existence of headroom between both contracts when the Availability Ratio drops below 80%. In this case, the LTA considers, based on the experience of the companies that form the Operator and their performance during the first 4 years of operation, that the events that would lead to obtaining such Availability Ratio would be unlikely scenarios.
- 9.7.6 Lastly, the LTA notes that data available for 2020 shows the Operator is receiving bonuses as a result of the Availability Factor. Considering the base case included in the financial model for DTP includes a scenario of zero deductions/zero bonuses, together with the situation caused by the widespread Covid-19 pandemic, the LTA considers this factor to be representative of a good performance by both DTP and the Operator.

### **10.1 INTRODUCTION**

- 10.1.1 This section of the report provides the LTA commentary on (i) the approach taken by DTP and the Operator in building up their cost projections throughout the O&M Phase for Routine Operation and Maintenance and Renewals; (ii) a review of the renewal budget; and (iii) the overall benchmarking of OPEX.
- 10.1.2 The LTA is aware of the commercial sensitiveness of the information presented in this section. Accordingly, the LTA has kept its analysis high level in line with the level of detail of the information received by DTP/the Operator.

## **10.2COST BUDGETING AND CONTROL**

- 10.2.1 The approach of the Operator to both cost budgeting and cost control provides an indication of its ability to adhere to the budget formulated prior to financial close. The LTA has reviewed the Operator's cost management and procurement processes in order to assess these against good industry practice and to better understand the likelihood of the risks of additional costs during the O&M Phase. The key components are as follows:
  - The Operator was actively involved as part of the Consortium during the bidding phase, providing input to the development of the technical solutions for the D&C Phase;
  - The members of the Operator each manage their own cost databases as intellectual property which is utilized for inputs into their respective projects. The costs within these databases are market tested.;
  - The EAMs software is an intelligent integrated software which is used by the procurement team to place procurement orders on the basis of STOs, service life expiry and any specific condition identified which requires maintenance, repair or replacement;
  - Inventory of replacement parts is revised on a Min-Max basis, such that spares are available immediately when required and there is a limit on over purchasing;
  - The maintenance crews, procurement team and O&M Managers all have visibility of the procurement process, such that there are several "check-stops" when making a purchase; and
  - The Operator and its Sponsors undertake a "deep dive" look forward type assessment of the infrastructure every few years in order to refine the as-current budget.

### **10.3 TOTAL OPEX BUDGET DURING OSM PHASE**

- 10.3.1 Throughout the O&M Phase, the overall Opex allowance (including routine O&M costs and renewals) is approximately USD 1,800 mill (in 2020 dollars).
- 10.3.2 The breakdown of the renewal allowance across the O&M Phase is presented in the following table. The table's fourth column ("Typical Allowance") includes for each of the renewal elements a range of typical values seen in other P3 railway projects which have allowed the LTA to check at a high-level that the Operator has followed a suitable methodology to estimate the renewal allowances.

#### Table 10-1 Total Renewal Costs Breakdown

ELEMENT	RENEWAL ALLOWANCE	DISTRIBUTION	TYPICAL ALLOWANCE	ALIGNMENT?
Revenue Vehicles	44.9%		~50%	Yes
Track	15.2%		~10%-20%	Yes
Train Control & Signalling	11.7%		~10%-15%	Yes
CRMF Building	6.3%		~5%	Yes
Traction Power & OCS	5.5%		~5%	Yes
Non-Revenue Vehicles	5.4%	Rotem Cars, 44.9%	~5%	Yes
Stations	2.9%		<5%	Yes
Communications	2.7%		<5%	Yes
Civil Incl. Parking Lots	1.9%	Track, 15:2% Signalling, 11.7%	<5%	Yes
CRMF Equipment	1.7%		<5%	Yes
occ	1.7%	CRMF Building, 6.3% Non-Revenue Stations, 2.9%	<5%	Yes
CRMF Furniture	0.1%	CRMF	<5%	Yes
TOTAL	100.0%	Traction Power & OCS, 5.5%Comms, 2.7%Civil, 1.9%Equil 1.7%OCC, 1.7%	-	

Source: LTA

10.3.3 There are three cost elements which account for 72% of the renewal budget. These comprise the following:

- Revenue Vehicles: an allowance equivalent to 44.9% of the renewal costs accounting for activities which include major maintenance, vehicle overhauls, mid-life interventions, replacement of the main mechanical components of the vehicles such as motors and gearboxes, trucks etc.;
- Track: an allowance equivalent to 15.2% of the renewal costs accounting for activities which include replacement of crossovers, grinding, ballast tamping, rail replacements etc.;
- Train Control & Signalling: an allowance of 11.7% of the renewal costs accounting for activities which include replacement of electrical equipment such as computers (interlocking), HVAC, CCTV components, renewal/upgrade of software etc.

### **10.4 BENCHMARKING OF KEY OPEX AND REHABILITATION COSTS**

- 10.4.1 Benchmarking railway projects should consider that all projects have different railway infrastructure components, bespoke contractual requirements for the operations and maintenance and for the handover of the infrastructure, specific rolling stock characteristics and control requirements, service frequency etc.
- 10.4.2 The benchmarking exercise undertaken provides a high-level comparison of the overall Opex budget. For this section, the LTA has conducted its analysis using its own database comprised of an extensive list of projects both in the US and worldwide which includes various railway typologies in which the built infrastructure is considered of a comparable design (e.g. commuter railway, light railway, and trams) to the Project.

- 10.4.3 Given that only high-level information was made available for the O&M costs and renewal costs, the LTA has compared the Project against other projects of similar complexity as per the "Opex & Rehabilitation Cost per year and per track km". This allows for the standardisation of the operating and rehabilitation costs across long term PPP rail projects. This benchmark provides a sense check of the order of magnitude of the overall budget but does not fully take into consideration important factors such as the level of service provide by a project, and/or the sufficiency of the individual direct and indirect cost components.
- 10.4.4 The "Opex & Rehabilitation Cost per year and per track km" is calculated as the ratio of the Opex and Rehabilitation costs throughout the O&M Phase divided by the number of years of the O&M Phase and the track length <sup>1</sup> of the Project (all in 2020 USD).
- 10.4.5 The LTA has selected a set of projects from its benchmark database which present similar characteristics to those of the Project in terms of the as-built infrastructure, region and O&M requirements. The chart below shows the "Opex & Rehabilitation Cost per year and per track km" budget is within the LTA's benchmark range:

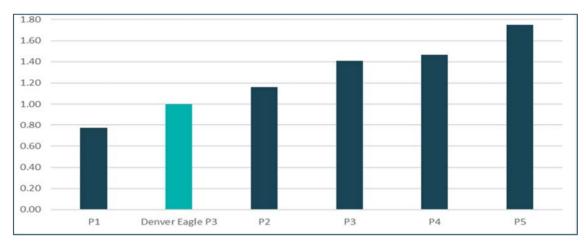


Figure 10-1 "Opex & Rehabilitation Cost per year and per track km" benchmark

Source: LTA

- 10.4.6 It is worth mentioning that the cost information received from the Operator includes both direct and indirect costs, the latter including both contingency and profit. The LTA has not received an estimate of the proportion of these allowances, hence a comparison with equivalent allowances made in other railway projects has not been possible.
- 10.4.7 However, the LTA has been informed that during the years the Project has been in operation, the budgeted O&M budget has been sufficient and additional costs have not been generated. It is noted that during the entirety of the O&M Phase there would be some variations in the actual cost against a flat O&M payment profile due to the variation in the conditions of infrastructure.

### **10.5 LTA OPINION**

10.5.1 **G**enerally speaking, the overall Opex budget is considered comparable when compared using the unit of track kilometres with other projects of similar scope and characteristics. This provides an assessment of the overall budget without evaluating the sufficiency of the specific cost components and the relation between cost and expected level of service.

<sup>&</sup>lt;sup>1</sup> Worth highlighting that track length of the Project (~ 88 km) and Project length (~65.5 km) are different. This is result of the ~28.8 km of double track in the East Corridor and the 6.6 km track overlap between the Gold Line and the NWES.

- 10.5.2 The LTA believes the Operator has in place a robust and well managed system for asset management and cost management. The practices implemented are found to be in line with expectations for a Project which is able to perform its obligations within budget and the proactive approach to procurement is considered to provide further precision when assessing the possibility of any future unforeseen costs.
- 10.5.3 In terms of renewals budget, the allowances of cost buckets when compared one to another are considered within the expected order of magnitude seen by the LTA in projects of similar scope and complexity. This also provides an indication that the cost build-up has followed a suitable methodology.
- 10.5.4 Considering that the cost estimates are taken from the database of one of the Operator companies, and that the companies that form the Operator have gone recently through successful financial closes of projects of similar scope and complexity, the LTA considers that the costing information is suitably market tested.
- 10.5.5 Based on the information provided by the Operator, it is understood that to date, the Operator's Monthly Fee has been sufficient for the Operator to perform the O&M services a to high-level without requiring any budget modifications. This is also indicative of the suitability of the indexation presented in Table 11-1 of this report. However, through modelling a flat O&M payment profile it can be expected that some cost will vary over time as the asset continues to age and renewals interventions are undertaken. Although the modelling of a flat Operator's Monthly Fee is considered reasonable, both the Operator and the LTA believe certain routine maintenance costs will show some variation across different years. Nevertheless, the LTA does not reasonably expect additional costs to the total budget.
- 10.5.6 In addition, it is noted that during the O&M Phase there may be some variation in the Renewals spending during a given year, which is allowed for in the mechanism of the Forecast Renewal Budget (see Chapter 4). Although the details of the Renewals budget could not be provided, preventing a convictive conclusion on the sufficiency of the specific cost components, any variations could be considered typical of an operational rail project and there are no obvious concerns there are foreseeable deviations that would generate an overall increase in the Renewal budget at this stage.

## **11.1 APPENDIX A - OSM PHASE PAYMENT MECHANISM DESCRIPTION**

11.1.1 Payments during the O&M Phase (Monthly Service Payments) are obtained from the Project's 3 commuter lines payment profile submitted during bid stage, including those costs associated with Renewals. The following figure displays the transition from the aforementioned payment profile (black-dotted box at the bottom the diagram) until the obtaining of the Monthly Service Payment received by DTP (red-dotted box at the top-left hand corner of the diagram).

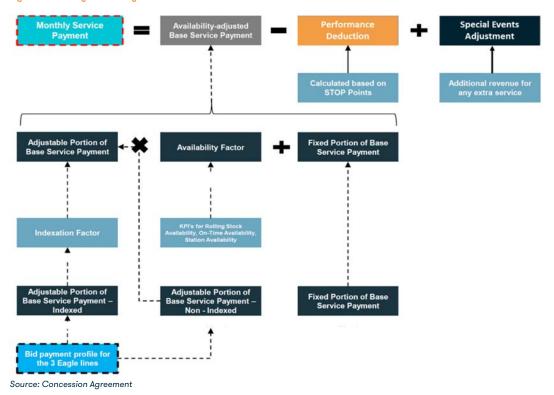


Figure 11-1 Monthly Service Payment structure

11.1.2 Monthly Service Payments are broken down into three components: (i) Availability-Adjusted Base Service Payments; (ii) Performance Deductions; and (iii) Special Events Adjustments. The following subsections provide a summary on how they are obtained individually and their role into obtaining the Project's Monthly Service Payment.

### (i) Availability-Adjusted Base Service Payment

11.1.3 The first component, Availability-Adjusted Base Service Payment, has three parts: (i) the Adjustable Base Service Payment; (ii) the Availability Factor; and (iii) the Fixed Base Service Payment:



- 11.1.4 The Base Annual Service Payment ("BASP") for each Commuter Rail Service or line is divided into (i) the Adjustable Base Service Payment element ("BASP<sub>adj,n</sub>"); and the (ii) Fixed Base Service element ("BASP<sub>fix,n</sub>").
- 11.1.5 The adjustable element for a given year (n), BASP<sub>adj,n</sub>, is calculated as the minimum between the BASP in that given year and the average BASP over 30 years, starting in 2010 (Base Date):

$$BASP_{adj,n} = min(BASP_n, BASP_{average,n})$$

11.1.6 The fixed element for a given year (n), BASP<sub>fix,n</sub>, is calculated as the difference between the BASP in that given year and the Adjustable BASP<sub>adj,n</sub>:

- 11.1.7 Based on the how the adjustable and fixed elements are obtained and their interrelation, if the BASP in a given year (n) is lower than the average BASP over 30 years, then the BASP is entirely allocated to the Adjustable component.
- 11.1.8 To obtain the Adjustable and Fixed Service Payments for any given month (m), these are calculated as a proportion of ("Dm") the number of days in month (m) of a Contract Year (n) of 365 days:

$$BSP_{adj,mn} = \frac{D_m}{365} \times BASP_{adj,n} \quad BSP_{fix,mn} = \frac{D_m}{365} \times BASP_{fix,n}$$

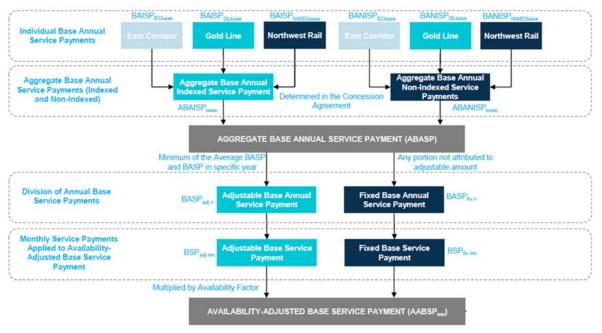
- 11.1.9 Moreover, the Adjustable BASP<sub>adj,n</sub> has two portions (i) the indexed portion and the (ii) non-indexed portion. For the indexed portion, Service Payments are escalated using a composite escalation factor, which is a weighted average of Consumer Price Index ("CPI"), Labour Index, and Materials Index ("MI"). It should be noted that in accordance with CI.49 of the CA, there is a mechanism for replacing the indices or the ratio of the current indices in the event that these are failing to accurately track the costs which such indices were designed to track and this is found to be causing a material adverse event.
- 11.1.10 The following table summarises each index weight used to obtain the escalation factors:

PAYMENT COMPONENT	INDEX	WEIGHT				
	CPI	25.5%				
Adjustable Base Service Payment	Labour Index	50%				
	MI	24.5%				
Source: LTA. Data: Concession Agreement						

Table 11-1 Indexation weights

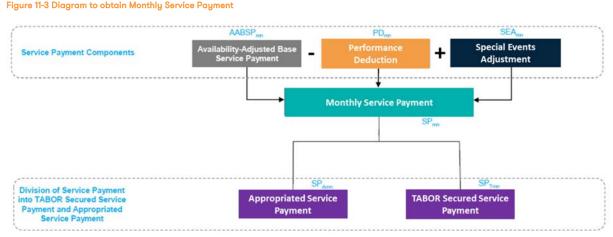
11.1.11 Both the indexed and non-indexed portions of the Adjustable BASP, and the Fixed BASP for each of the Project's line: East Corridor, Gold Line, and NWES are arranged as per the following figure to obtain the Availability Adjusted Base Service Payment ("AABSP<sub>mn</sub>") for a month (m) of a Contract Year (n):

#### Figure 11-2 Diagram to obtain Availability Adjusted Base Service Payment



Source: Concession Agreement

11.1.12 The AABSP<sub>mn</sub> is then adjusted by Performance Deductions ("PD<sub>mn</sub>") and Special Events Adjustments ("SEA<sub>mn</sub>") for a month (m) of a Contract Year (n) to obtain the Monthly Service Payment ("SP<sub>mn</sub>"):



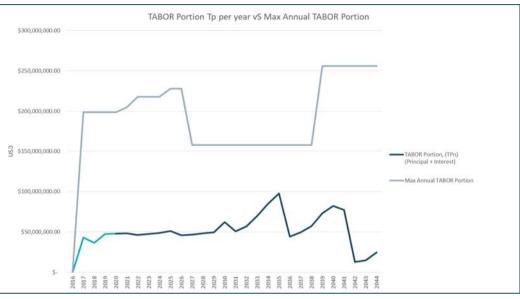
Source: LTA. Data: Concession Agreement

- 11.1.13 In turn, the Monthly Service Payment (SP<sub>mn</sub>) payable in a month (m) of a Contract Year (n) is comprised of two components: the Appropriated Service Payment (SP<sub>A,mn</sub>) which corresponds to the Service Payment payable during the Operating Period to cover operations and maintenance of the Project; and the TABOR Secure Payment (SP<sub>T,mn</sub>) which corresponds to cover the debt service without being subject to appropriations.
- 11.1.14 The TABOR Secure Payment (SP<sub>T,mn</sub>) is obtained as the minimum between the Monthly Service Payment (SP<sub>mn</sub>) and the TABOR Portion (TP<sub>mn</sub>) of a Contract Year (n):

$$SP_{T, mn} = \frac{1}{12} \times TP_{n}$$

11.1.15 TPn values are defined in Concession Agreement's Appendix 11 and are the sum of the Secured Principal and the Secured Interest. The following table represents the TPn values per year until the end of the O&M Phase) and the Maximum Annual TP:

Figure 11-4 Annual TPn values



Source: LTA. Data: Concession Agreement

11.1.16 The Appropriated Service Payment (SP<sub>A,mn</sub>) is calculated as the greater of (i) the Monthly Service Payment (SP<sub>mn</sub>) less the TABOR Secured Service Payment (SP<sub>T,mn</sub>) and (ii) 0.

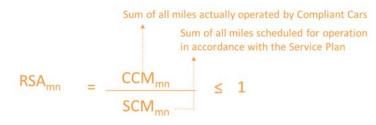
$$SP_{A,mn} = max(SP_{mn}, SP_{T,mn}, 0)$$

**Availability Factor** 

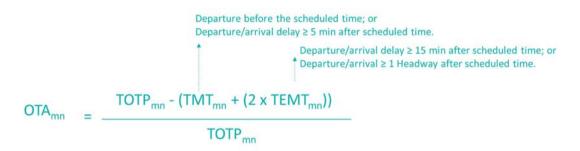
11.1.17 The Availability Factor ("AF") is dependent upon the Availability Ratio ("AR") values, and their correlation is defined in the Concession Agreement's Appendix 11. The Availability Ratio for any given month (m) of a Contract Year (y) is calculated for each individual line of the Project and is weighted average of three components: (i) Rolling Stock Availability ("RSA"); (ii) On Time Availability ("OTA"); and (iii) Station Availability ("SA"):

$$AR_{mn} = \frac{(3 \times RSA_{mn}) + (2 \times OTA_{mn}) + (1 \times SA_{mn})}{6}$$

11.1.18 Rolling Stock Availability ("RSA") accounts for a 50% of the Availability Ratio ("AR"). For any given month (m) of a Contract Year (n), RSA is calculated as the ratio of Compliant Car Miles ("CCM") and the Scheduled Car Miles ("SCM"). RSA is determined in accordance with the following formula:



11.1.19 On Time Availability ("OTA") accounts for a 33% of the Availability Ratio ("AR"). For any given month (m) of a Contract Year (n), OTA is calculated as the ratio of the Total On Time Performance ("TOTP") for scheduled trains in revenue service that depart/arrive on time (excluding any car subject to a Car Downtime Event) accounting for the Total number of Missed Times ("TMT") and the Total number of Extended Missed Times ("TEMT"). OTA is determined in accordance with the following formula:



11.1.20 Station Availability ("SA") accounts for a 17% of the Availability Ratio ("AR"). For any given month (m) of a Contract Year (n)m the SA is calculated as the ratio between the Scheduled Station Hours ("SSH") which represent the number of hours the station is scheduled to be open; and the Station Downtime Hours ("SDH") which represent the number of hours in a month that the station has a Station Downtime Event. SA is determined in accordance with the following formula:

$$Sum of the number of hours for each station scheduled to be open
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11.1.21 The following figure displays the relationship between the Availability Factor ("AF") and the calculated Availability Ratio ("AR"):

#### Figure 11-5 Correlation between AF and AR



Source: LTA. Data: Concession Agreement

- 11.1.22 The target Availability Ratio performance level of 97.7% results in the application of 100% Availability Factor to the Base Service Payment. From this value, the Availability Factor is scaled up (bonus) or down (deduction) depending on whether the performance is above or below the 97.7% target.
- 11.1.23 The Availability Factor is floored at 80% which corresponds to an Availability Ratio of 70%. From this point, the Availability Factor cannot go below 80%, consequently, the deductions from the Adjustable Base Service Payment is capped at 20%.
- 11.1.24 Both Concession Agreement and O&M Agreement have termination provisions when certain AR values are reached over an extended period. The following table summarises the termination triggers and the periods that need to be reached in order to terminate each of the aforementioned contracts:

	CA	O&M AGREEMENT		HEADROOM				
AR Trigger	Extended Period	AR Trigger	Extended Period	HEADROOM				
AR ≤ 85%	In 6 or more months of any rolling 8-month period	AR ≤ 89%	In 5 or more months of any	AR (85%-89%): 4% buffer per month; AR (≤85%): 1-month buffer				
AR ≤ 80%	In 2 or more consecutive months		rolling 7-month period	None				
Source: LTA. Dat	ource: LTA. Data: Concession Agreement							

Table 11-2 AR values - Termination triggers and extended period

# (ii) Performance Deductions

11.1.25 Performance Deductions is the second component in the calculation of Monthly Service Payment.

PERFORMANCE DEDUCTION	=	Performance Deduction Percentage	×	Adjustable Base Service Payment
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11.1.26 The Performance Deduction Percentage for any given month corresponds to the number of Service Task Order Program ("STOP") Points accrued by DTP in that month.

- 11.1.27 STOP Points track DTP's timeliness in completing Service Task Orders ("STO") instructed by RTD and are earned at an escalated rate when a STO remains unremedied after the relevant STO Remedy Time has been exceeded. Worth highlighting that if an STO is attended within the remedy period, 0 STOP points will be applied.
- 11.1.28 STOP Points are accumulated for performance failures with respect to certain elements such as elevators, Rolling Stock, life safety systems, facilities, waste management, snow and ice removal, fare enforcement, safety, security and infrastructure. The following table summarises the STOs; whether a STO Remedy Time is applicable; and the STOP Points range defined on CA's Appendix 11.

	AREA/ELEMENT	STOs	STO REMEDY	STOP POINTS
1	Elevators	<ul> <li>Availability</li> <li>Preventive Maintenance</li> <li>Cleanliness and odour</li> </ul>	Yes *	2 or 5 each
2	Rolling Stock	<ul> <li>Preventive Maintenance</li> <li>Interior Cleanliness</li> <li>Seats</li> <li>CCTV cameras and equipment</li> <li>Automated Passenger Counter (APAC)</li> <li>Graffiti</li> </ul>	Yes *	2 each
3	Infrastructure, Track and Structure	• Preventive Maintenance	Yes	5 each
4	Life Safety Systems	<ul> <li>Fire extinguishers and firefighting equipment</li> <li>Pull boxes</li> <li>Emergency doors and pathways</li> <li>Fire hydrants</li> </ul>	Yes	5 each
Б	Facility and Stations	<ul> <li>Waiting area/shelter</li> <li>Litter</li> <li>Preventive maintenance</li> <li>Graffiti</li> <li>Employee relief facility and/or bathroom</li> <li>CCTV cameras, emergency telephones, and equipment</li> <li>Bicycle parking areas</li> <li>Signage</li> <li>Parking lots lighting</li> <li>Schedule/maps kiosk</li> <li>Real-time displays</li> <li>Parking lots/structures condition</li> <li>ADA ramps</li> </ul>	Yes *	2 - 5 each
6	Waste Management	<ul> <li>Trash bins</li> <li>Recycling bins</li> <li>Dumpsters</li> <li>Rodent Control</li> </ul>	Yes	2 each
7	Snow and Ice Control	<ul> <li>Stations, ADA ramps, parking lots and structures</li> </ul>	Yes	5 each
8	Fare Enforcement	<ul> <li>On-board inspection</li> <li>Weekly fare sweeps</li> <li>Fare data reporting</li> </ul>	Yes	2 - 5 each
9	Safety	• Hazard management	Yes	5 each
10	Security	<ul><li>Locks</li><li>Reporting</li></ul>	Yes	2 - 5 each

Table 11-3 Summary of the STOs, STO Remedy Times and STOP Points

\* Preventive maintenance, due to its own nature, does not have remedy time. All inspections must be completed within the approved intervals specified in their specific Maintenance Plans (facility, rolling stock, infrastructure, )

Source: LTA. Data: Concession Agreement

# 11.1.29 If an STO remains unremedied after the relevant STO Remedy has been exceeded, STOP Points will be assessed as follows:

Table 11-4 STOP Points escalation rates

PERIOD OF 12 HOURS	CUMULATIVE	FACTOR	STOP POINTS
First 12 hours	12 hours	125%	2.5 - 6.25
Second 12 hours	24 hours	150%	3 - 7.5
Third 12 hours	36 hours	175%	3.5 - 8.75
Fourth 12 hours	48 hours	200%	4 - 10

Note: After the fourth 12-hour period, each subsequent 12-hour period is escalated at a factor rate of 200%.

Source: LTA. Data: Concession Agreement

- 11.1.30 The Concession Agreement allows DTP the preparation of a Remedial Plan to remedy the cause of STOs. This option is triggered if a STO:
  - Is not remedied by the end of the fourth 12-hour period;
  - Occurs 5 or more times in any month, and/or 10 or more times in any 12-month period
- 11.1.31 In this case, DTP shall provide to RTD a Remedial Action Plan for each occurrence including (i) the actions that will remedy the cause of the event; and (ii) the scheduled for the corrective and mitigating actions that will minimise the impact on passengers, as presented in Table 3.3-4of this report.
- 11.1.32 After RTD has received the Remedial Action Plan, and during its review, STOP Points will stop being imposed. If RTD accepts the Remedial Action Plan, only the original STOP Points will be assessed; whereas if RTD finds the Remedial Action Plan unreasonable, STOP Points will resume retroactively. Failure to submit a Remedial Action Plan, successfully implement the actions within the time, or take interim actions, will considered as Persistent Condition resulting in the accrual of 10 STOP Points per occurrence, per month.
- 11.1.33 The following table represents the correlation between STOP Points and Performance Deductions ("PD"):

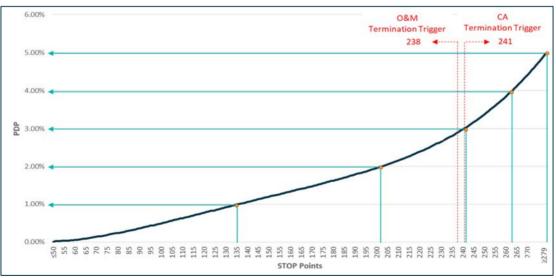


Figure 11-6 STOP Points and Performance Deductions correlation – Escalation Rate

Source: LTA. Data: Concession Agreement

- 11.1.34 The first 50 STOP Points are exempted from Performance Deductions (PD = 0 %). From this value, PDs follow an escalated rate as the number of STOP Points increase until reaching a maximum of 5% equivalent to 279 STOP Points.
- 11.1.35 As for the availability, both Concession Agreement and O&M Agreement have termination provisions when certain PD values are reached over an extended period. The following table summarises the termination triggers and the periods that need to be reached in order to terminate each of the aforementioned contracts:

Table 11-5 PD values - Termination triggers and extended period

CA		OSM AGREEMENT		
PD Trigger	Extended Period	PD Trigger	Extended Period	HEADROOM
PD > 3%	In 6 or more months of any rolling 8-month period	PD > 2.9%	In 5 or more months of any rolling 7-month period	PD > 3%: 1-month buffer

Source: LTA. Data: Concession Agreement

## (iii) Special Events Adjustments

- 11.1.36 In accordance with the Concession Agreement, DTP is required to provide additional service when there is any event that is likely to generate significantly more passenger demand on the Commuter Rail Service(s) relative to the regular service capacity outlined in the Service Plan (e.g. sport events, music events etc.).
- 11.1.37 For the provision of these services, RTD compensates DTP through the Special Event Adjustment (the third component in the calculation of Monthly Service Payment) which is calculated as follows:



11.1.38 The Service Hour Price for Incremental Service ("SHP<sub>IS,n</sub>") is measured per car hours and escalates the Service Hour Price in Base Date ("SHP<sub>IS,Base</sub>") equal to \$60 per hour by CPI:

SHP<sub>ISn</sub> = SHP<sub>IS base</sub> x 
$$\frac{CPI_n}{CPI_{base}}$$

11.1.39 The Service Hour Price for Incremental Service is then multiplied by the Actual Incremental Compliant Car hours actually operated or made available for operation; and can be further escalated by multiplying the ratio of Actual Compliant Car hours to those that were scheduled. The aggregate Car hours for such services cannot exceed 10% of the Scheduled Car Hours for the Contract Year.

## **11.2 APPENDIX B - RELIEF EVENTS AND DELAY EVENTS**

Table 11-6 Delay Events

o) General Delays       All         (i) Derailment       If caused solely by a third party         (ii) Orade Crossing Accident       If accident not caused by Concessionaire's equipment or violation of operating rules         (iv) Other Train Conflict       If a passenger or freight train is disabled or its operation fouls RTD service         (v) Dispatcher Error       If dispatching is conducted by a third party, such as a freight roliroad         (vi) Communications Failure       If caused solely by a third party or RTD radio network failure         (viii) Approved Wointennone,       If delay is within an RTD approved work period         (viii) Approved Wointennone,       If delay is within an RTD approved work period         (vi) Utility Failure - Telephone       If caused solely by a third party         (v) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vi) Utility Failure - Telephone       If caused solely by a third party         (vii) Obsciretins RRD opartment /       All	EVENT	DESCRIPTION				
(ii) Derailment       If caused solely by a third party         (iii) Grade Crossing Acaident       If accident not caused by Concessionaird's equipment or violation of operating rules         (iv) Other Train Conflict       If a passenger or freight train is disabled or its operation fouls RTD services         (v) Dispatcher Error       If dispatching is conducted by a third party, such as a freight reilroad         (vi) Communications Failure       If caused solely by a third party or RTD radio network failure         (vii) Third Party Contractor Work       If delay is within an RTD approved work period         (viii) Third Party Contractor Work       If delay is within an RTD approved work period         (viii) Utility Foilure - Telephone       If caused solely by a third party         (x) Utility Foilure - Steatric       If caused solely by a third party         (xi) Utility Foilure - Water       If caused solely by a third party         (xii) Pascender in Right of Way or grade crossing       If caused solely by a third party.         (xii) Obstruction in Right of Way or grade crossing       If caused solely by a third party.         (xii) Pasenger Initiated emergency or grade accessing       If reported to law enforcement injue of the Pasenger in RID's determination         (xii) Obstruction in Right of Way or grade crossing       If reported to law enforcement injue of the Pasenger in RID's determination         (xii) Obsenger Related       If Pasenger in RID's determination	a) General Delays					
(iii) Grade Crossing Accident       If accident not caused by Concessionalire's equipment or violation of operating rules         (iv) Other Train Conflict       If a passenger or freight train is disabled or its operation fouls RTD service         (v) Dispatcher Error       If dispatching is conducted by a third party, such as a freight railroad         (vi) Communications Failure       If caused solely by a third party or RTD radio network failure         (vii) Approved Maintenance, Engineering and Inspections during grade work period       If delay is within an RTD approved work period         (xii) Utility Failure - Telephone       If caused solely by a third party         (xi) Utility Failure - Electric       If caused solely by a third party         (xii) Hazardous Material Spill       If caused solely by a third party         (xii) Vility Foilure - Water       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       All         (xii) Obstruction in Right of Way or grade crossing       If caused by a third party, provided DTP has taken reasonable actions to prevent soid vandalism         (xii) Obstruction in Right of Way or grade crossing       If caused solely by a third party         (xii) Pasenger Initiated emergency to protect to low enforcement.       (xii) Pasenger Related         (xii) Pasenger Related       If reported to low enforcement.         (xii) Pasenger Related       If Rausensting in RID's determination	(i) Force Majeure Events	All				
Init Grade Crossing Accident         rules           (iv) Other Train Conflict         If a passenger or freight train is disabled or its operation fouls RTD service           (iv) Dispatcher Error         If dispatching is conducted by a third party, such as a freight railroad           (vi) Communications Failure         If caused solely by a third party or RTD radio network failure           (vii) Approved Maintenance, Engineering and Inspections during track outage work periods         If delay is within an RTD approved work period           (vii) Utility Failure - Telephone         If caused solely by a third party           (v) Utility Failure - Telephone         If caused solely by a third party           (vi) Utility Failure - Telephone         If caused solely by a third party           (vi) Utility Failure - Stephone         If caused solely by a third party           (vi) Utility Failure - Vater         If caused solely by a third party           (vii) Utility Failure - Material Spill         If caused solely by a third party           (viii) Poleo/Fire Department /         All           state         for caused by a third party, provided DTP has taken reasonable actions to prevent grade crossing           viii) Possenger initiated mergency         All           viii) Possenger initiated mergency         All           viii) Possenger Faltatad         If reported to law enforement taid vandalism           viii) Obstruction in Rig	(ii) Derailment	If caused solely by a third party				
(v) Dispatcher Error       If dispatching is conducted by a third party, such as a freight roliroad         (vi) Communications Failure       If caused solely by a third party or RTD radio network failure         (vii) Third Party Contractor Work       If delay is within an RTD approved work period         (viii) Approved Maintenance, Engineering and Inspections during track outage work periods       If delay is within an RTD approved work period         (x) Utility Failure - Telephone       If caused solely by a third party         (x) Utility Failure - Telephone       If caused solely by a third party         (x) Utility Failure - Telephone       If caused solely by a third party         (xi) Dispatcher Error       If caused solely by a third party         (xi) Utility Failure - Water       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       All         (xii) Police/ Fire Department / Medical Activity       All         (xii) Obstruction in Right of Way or grade crossing       If caused solely by a third party, provided DTP has taken reasonable actions to prevent soid vanadalism         (xii) Destruction in Right of Way or grade crossing       If acused solely by a third party         (xii) Passenger Related       If passenger is sick or injured         (xii) Passenger Related       If passenger is sick or injured         (xii) Passenger Related       If acaused by a third party. <t< td=""><td>(iii) Grade Crossing Accident</td><td></td></t<>	(iii) Grade Crossing Accident					
(w) Communications Failure       If caused solely by a third party or RTD radio network failure         (wii) Third Party Contractor Work       If delay is within an RTD approved work period         (wiii) Approved Maintenance, Engineering and Inspections during track outage work periods       If delay is within an RTD approved work period         (s) Utility Failure - Telephone       If caused solely by a third party         (a) Utility Failure - Electric       If caused solely by a third party         (xi) Utility Failure - Electric       If caused solely by a third party         (xi) Utility Failure - Electric       If caused solely by a third party         (xii) Pacadous Material Spill       If caused solely by a third party         (xii) Pacadous Material Spill       If caused solely by a third party         (xiii) Police/ Fire Department / Medical Activity       All         (xii) Pasconducted or required       If DTP has provided prior notification RTD and is compliance with its operating plon         (xii) Pasconger initiated emergency       All         (xiii) Pasconger initiated emergency       All         (xii) Pasconger Related       If passenger in Sito or injured         (xii) Passenger Related       If passenger in Sito or injured         (xii) Passenger Related       If acused by a third party         (xii) Passenger Related       If in caused by a third party         (xiii) Pasceque	(iv) Other Train Conflict	If a passenger or freight train is disabled or its operation fouls RTD service				
(vii) Third Party Contractor Work       If delay is within an RTD approved work period         (viii) Approved Maintenance, Engineering and Inspections during track outage work periods       If delay is within an RTD approved work period         (xi) Utility Failure - Telephone       If caused solely by a third party         (x) Utility Failure - Telephone       If caused solely by a third party         (xi) Utility Failure - Telephone       If caused solely by a third party         (xi) Utility Failure - Water       If caused solely by a third party         (xii) Hazardous Material Spill       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       All         xiv) FRA Conducted or required tests       If DTP has provided prior notification RTD and is compliance with its operating plan         xiv) Obstruction in Right of Way or grade crossing       If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism         xiv) Destruction in Right of Way or grade crossing       If caused solely by a third party         y Passenger Initiated emergency       All         xivi) Presposs       If reported to law enforcement         xiv) Passenger Related       Special Stuation in RID's determination         xiv) Passenger Related       Special Stuation in RID's determination         xiv) Passenger Related       Special Stuation in RID's determination         xii) RT	(v) Dispatcher Error	If dispatching is conducted by a third party, such as a freight railroad				
Viiii) Approved Maintenance, Engineering and Inspections during track outage work periods       If delay is within an RTD approved work period         (iv) Utility Failure - Telephone       If caused solely by a third party         (x) Utility Failure - Telephone       If caused solely by a third party         (xi) Utility Failure - Vater       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       If DTP has provided prior notification RTD and is compliance with its operating plan         (xi) Obstruction in Right of Way or grade crossing       If caused solely by a third party, provided DTP has taken reasonable actions to prevent said vandalism         (xii) Polser/ Free Department / Medical Activity       All         (xii) Postruction in Right of Way or grade crossing       If caused solely by a third party, provided DTP has taken reasonable actions to prevent said vandalism         (xii) Postruction in Right of Way or grade crossing       If caused solely by a third party         (xii) Postenger Related       Unruly Passenger in RTD's determination         (xiii) RD Drive Forton       If R Dreve Forton         (xiii) RTD Freetion       If Caused by a third party.         (xiii) Postenger Related       Special stuation in RTD's determination         (xiii) Postenger Related       Special stuation in RTD's determination <td< td=""><td>(vi) Communications Failure</td><td>If caused solely by a third party or RTD radio network failure</td></td<>	(vi) Communications Failure	If caused solely by a third party or RTD radio network failure				
Engineering and Inspections during       If delay is within an RTD approved work period         (iv) Utility Failure - Telephone       If caused solely by a third party         (x) Utility Failure - Electric       If caused solely by a third party         (xi) Utility Failure - Water       If caused solely by a third party         (xii) Otility Failure - Water       If caused solely by a third party         (xii) Police/ Fire Department /       All         xiv) FRA Conducted or required       If DTP has provided prior notification RTD and is compliance with its operating plan         xvi) Obstruction in Right of Way or       If caused solely by a third party, provided DTP has taken reasonable actions to prevent sid vanddism         xvii) Destruction in Right of Way or       If caused solely by a third party         viii) Passenger initiated emergency       All         xviii) Passenger Related       If pasenger in RID's determination         xviii) Passenger Related       If pasenger in RID's determination         xviii) Passenger Related       If in relevant season (so lang as train has sand and functioning sanders)         Xviii RDD irection       If daused by a third party.         I) Danoged Rail       If caused by a third party.         I) Danoger Related       If in relevant season (so lang as train has sand and functioning sanders)         I) Danoger Rail       If caused by a third party.	(vii) Third Party Contractor Work	If delay is within an RTD approved work period				
(x) Utility Failure - Electric       If caused solely by a third party         (xi) Utility Failure - Water       If caused solely by a third party         (xii) Hazardous Material Spill       If caused solely by a third party         (xiii) Police/ Fire Department / Medical Activity       All         xiv) FRA Conducted or required tests       If DTP has provided prior notification RTD and is compliance with its operating plan         xv) Vandalism       If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism         xvi) Obstruction in Right of Way or grade crossing       If caused solely by a third party         stii) Possenger initiated emergency stop       All         xviii) Trespass       If reported to law enforcement xix) Passenger Related         xvii) Passenger Related       If passenger in RiD's determination xiii) RTD Direction         xiii) RTD Direction       If RTD Requested xiii) Slippery Rail due to leaves         Yaning System (AHWCS)       If caused by a third party.         I) Detector Devices       If detector maintained by third party malfunctions         Xiii) RTD Direction       If Roused by a third party.         I) Detector Devices       If detector maintained by third party malfunctions         II) Detector Devices       If detector maintained by third party malfunctions         II) Automatic Highway Crossing Warning System (AHWCS)       If caused by a third	Engineering and Inspections during	If delay is within an RTD approved work period				
(xi) Utility Failure - Water       If caused solely by a third party         (xii) Hazardous Material Spill       If caused solely by a third party         (xiii) Police/ Fire Department / Medical Activity       All         (xiii) PAA Conducted or required tests       If DTP has provided prior notification RTD and is compliance with its operating plan         xv) Vandalism       If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism         xvi) Obstruction in Right of Way or grade crossing       If caused solely by a third party         xvii) Passenger initiated emergency stop       All         xviii) Trespass       If reported to law enforcement ixi Passenger Related         If passenger is sick or injured       Passenger is sick or injured         xviii) Trespass       If reported to law enforcement ixi) Passenger Related         If passenger is sick or injured       Passenger Related         If passenger is sick or injured       RTD Requested         xviii) Trespass       If in relevant season (so long as train has sand and functioning sanders) <b>b</b> Delays resulting from Engineering       If caused by a third party.         ii) Datector Devices       If detector maintained by third party molfunctions         iii) Automatic Highway Crossing       Maseed by a third party         Varing System (AHWCS)       If caused by a third party         Maifunc	(ix) Utility Failure - Telephone	If caused solely by a third party				
(xi) Hazardous Material Spill       If caused solely by a third party         (xii) Police/ Fire Department / Medical Activity       All         xiv) FAA Conducted or required tests       If DTP has provided prior notification RTD and is compliance with its operating plan         xv) Vandalism       If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism         xvi) Obstruction in Right of Wag or grade crossing       If caused solely by a third party         xvii) Passenger initiated emergency stop       All         xviii) Praspass       If reported to law enforcement         xix) Passenger Related       If passenger is sick or injured         xviii Passenger Related       Unruly Passenger in RTD's determination         xviii) RD Direction       If RTD Requested         xviii) Slippery Rail due to leaves       If in relevant season (so long as train has sand and functioning sanders) <b>b Delays resulting from Engineering Performance</b> If detector maintained by third party malfunctions         ii) Automatic Highwag Crossing       If caused by a third party         Yaring System (AHWCS)       If caused by a third party         wii Train control system power failure       If caused by a third party         vi Train control system power failure       If caused by a third party or conducted in accordance with regulations         vi Train and Observations       If caused solely	(x) Utility Failure - Electric	If caused solely by a third party				
[xiii] Police/ Fire Department / Medical Activity       All         xiv) FRA Conducted or required tests       If DTP has provided prior notification RTD and is compliance with its operating plan         xv) Vandalism       If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism         xvi) Obstruction in Right of Way or grade crossing       If caused solely by a third party         xvii) Passenger initiated emergency stop       All         viii) Trespass       If reported to law enforcement xix) Passenger Related         ix) Passenger Related       If passenger in sick or injured         xxii) Passenger Related       Unruly Passenger in RTD's determination         xii) Passenger Related       Special situation in RTD's determination         xiii) Slippery Rail due to leaves       If in relevant season (so long as train has sand and functioning sanders) <b>b) Delays resulting from Engineerity Performance</b> If caused by a third party.         i) Damaged Rail       If caused by a third party         ii) Detector Devices       If decused by a third party         iii) Automatic Highway Crossing       Mais or excessive road salt         Martinuction       If caused by a third party         iv) Train control system power failure       If caused by a third party         vorting Automatic Highway Crossing       If caused by a third party         vorting	(xi) Utility Failure - Water	If caused solely by a third party				
Medical Activity         All           xiv) FRA Conducted or required         If DTP has provided prior notification RTD and is compliance with its operating plan           xv) Vandalism         If caused by a third party, provided DTP has taken reasonable actions to prevent said vandalism           xvi) Obstruction in Right of Way or grade crossing         If caused solely by a third party           xvii) Passenger initiated emergency stop         All           xviii) Trespass         If reported to law enforcement           xix) Passenger Related         If passenger is sick or injured           xxii) Passenger Related         Unruly Passenger in RTD's determination           xxii) Passenger Related         Special situation in RTD's determination           xxii) RTD Direction         If RTD Requested           xxiii) Sippery Rail due to leaves         If in relevant season (so long as train has sand and functioning sanders)           b) Delays resulting from Engineeric         If caused by a third party.           I) Damaged Rail         If caused by a third party malfunctions           ii) Automatic Highway Crossing         If caused by high winds or excessive road salt           Varian control system power         If caused by a third party           rioin control system power         If caused by a third party           vii) Train control system power         If caused by a third party           ril	(xi) Hazardous Material Spill	If caused solely by a third party				
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xxii) RTD DirectionIf RTD Requestedxxiii) Slippery Rail due to leavesIf in relevant season (so long as train has sand and functioning sanders)b) Delays resulting from EngineeringFormancei) Damaged RailIf caused by a third party.ii) Detector DevicesIf detector maintained by third party malfunctionsiii) Automatic Highway CrossingIf caused by high winds or excessive road saltWarning System (AHWCS)If caused by a third partyiv) Train control system power failureIf caused by a third partyc) Transportation Crew and Dispatct-Related Delaysi) Tests and ObservationsIf caused solely by a third party or conducted in accordance with regulations						
b) Delays resulting from Engineering Performance         i) Damaged Rail       If caused by a third party.         ii) Detector Devices       If detector maintained by third party malfunctions         iii) Automatic Highway Crossing       If caused by high winds or excessive road salt         Warning System (AHWCS)       If caused by high winds or excessive road salt         Malfunction       If caused by a third party         iv) Train control system power       If caused by a third party         failure       If caused by a third party         c) Transportation Crew and Dispatched Related Delays         i) Tests and Observations       If caused solely by a third party or conducted in accordance with regulations		If RTD Requested				
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ii) Detector Devices       If detector maintained by third party malfunctions         iii) Automatic Highway Crossing       If caused by high winds or excessive road salt         Malfunction       If caused by high winds or excessive road salt         iv) Train control system power       If caused by a third party         failure       If caused by a third party         c) Transportation Crew and Dispatched Related Delays       If caused solely by a third party or conducted in accordance with regulations	b) Delays resulting from Engineering Performance					
ii) Automatic Highway Crossing Warning System (AHWCS) If caused by high winds or excessive road salt Malfunction iv) Train control system power failure If caused by a third party c) Transportation Crew and Dispatched Related Delays i) Tests and Observations If caused solely by a third party or conducted in accordance with regulations						
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failure       It caused by a third party         c) Transportation Crew and Dispatched Related Delays         i) Tests and Observations       If caused solely by a third party or conducted in accordance with regulations	Warning System (AHWCS)	If caused by high winds or excessive road salt				
c) Transportation Crew and Dispatched Related Delays i) Tests and Observations If caused solely by a third party or conducted in accordance with regulations	, ,	If caused by a third party				
ii) Handicapped Passenger In RTD's determination, special situation only – report required	i) Tests and Observations	If caused solely by a third party or conducted in accordance with regulations				
	ii) Handicapped Passenger	In RTD's determination, special situation only – report required				

iii) Other railroad crew

If other railroad crew did not follow the instructions of DTP

d) Operating Impact from Previous Delay				
i) Bus Connections	If root cause was a Delay Event Exclusion			
ii) Train shuttle operation	All			
iii) Crew (Plug Crew) Swap	If root cause was a Delay Event Exclusion			
iv) Late Train Ahead	If root cause was a Delay Event Exclusion			
v) Late Turn	If root cause was a Delay Event Exclusion			
vi) Meet Late Train	If root cause was a Delay Event Exclusion			
vii)Track Warrant/ Train Order	If root cause was a Delay Event Exclusion			
Copy Delivery				
viii) Run Wrong Iron/ Routing	If root cause was a Delay Event Exclusion			
Irregularity				
ix) Late Train	If root cause is assisting train disabled under a Delay Event Exclusion			
Source: O&M Agreement				

Table 11-7 Relief Events

#### CL.. RELIEF EVENTS

**38.1** For the purposes of this Agreement, the term Relief Event means any of the following events or circumstances or any combination of such events or circumstances:

(a) Any delay in granting Vacant Possession of any part of any Site beyond the time limits specified in Section 11.1
 (Availability of the Sites) (but not including any delay in the provision of Additional Land), or granting of Vacant Possession subject to restrictions of use and/or right of entry permits in either case not specified in the description of Vacant Possession.

Any failure by a Utility Owner to (i) complete design work related to any Utility Relocation for which the Utility Owner is responsible under and in accordance with the applicable Utility Relocation Agreement, (ii) cooperate in accordance with the applicable Utility Relocation Agreement as necessary to agree and execute a Work Order or (iii) remove

- (b) and/or Relocate any Owner Relocated Utility to the extent and in the manner shown on the Utilities Drawing within the designated time period for such Owner Relocated Utility work, removal or Relocation as set forth in the relevant Work Order, provided that in each case DTP has complied with the requirements set forth in Section 6 of Attachment 20 (Utilities).
- (c) Any failure by RTD to remove and/or Relocate any RTD Relocated Utility to the extent and in the manner shown on the Utility Drawings on or prior to the completion date for such RTD Relocated Utility specified in the Utility Matrix.

Any failure by RTD to provide DTP with Vacant Possession of the DUS Rail Segment Site in accordance with Section 24.4(b)(i) by the Guaranteed DUS Access Date, (ii) any agreement by RTD to or acknowledgment by RTD of the occurrence of Beneficial Occupancy pursuant to the DUS Infrastructure Agreement prior to satisfaction of the

(d) occurrence of Beneficial Occupancy pursuant to the DUS Infrastructure Agreement prior to satisfaction of the Beneficial Occupancy Requirements or (iii) the Beneficial Occupancy Requirements are not satisfied by the Guaranteed DUS Access Date.

A dispute raised by a Project Third Party relating to the compliance of a Concessionaire Design Submittal with the requirements for such Concessionaire Design Submittal as set out in the Third Party Agreements to the extent that it is subsequently determined, in accordance with the procedures set out in the applicable Third Party Agreement, that

(e) DTP Design Submittals submitted to that Project Third Party does comply with the requirements for such Concessionaire Design Submittal as set out in the Third Party Agreements; provided that DTP shall only be entitled to relief in respect of the delay caused by such dispute to the extent such delay directly relates to DTP's obligations with respect to Concessionaire Design Submittals.

A failure by a Project Third Party to review and comment on any Concessionaire Design Submittal submitted by DTP in accordance with the time periods referred to in Section 20.1(c); provided that the extension of time to which DTP shall be entitled shall be limited to the delay directly caused by the failure of such Project Third Party to review and

- (f) comment in accordance with the time periods set out in the Contract Data Requirements List and the Third Party Agreements to the extent such delay directly relates to DTP's obligations with respect to Concessionaire Design Submittals.
- (g) Any Unidentified Archaeological Remains discovered by DTP at any Site.

(h) Any Unidentified Environmental Condition encountered by DTP at any Site.

(i) Any Unidentified Geological Obstruction encountered by DTP at any Site.

- (j) Any Unidentified Endangered Species encountered by DTP at any Site.
- The implementation of a Change in accordance with Section 36 (Changes) or a Change in Law Change to the extent
   (k) provided in Section 37.2(b) or the implementation by DTP of any Betterment or Alternative Solution pursuant to a Work Order in accordance with Section 15.6 (Betterments and Alternative Solutions).
- (I) Any wilful misleading of DTP as described in Section 16.2 (Deficiencies in Reference Data).

A violation of Applicable Requirements by RTD as agreed by RTD or, if RTD disputes the occurrence of a violation of
 Applicable Requirements by RTD, as evidenced by a final unappealable ruling of court of law in a competent
 jurisdiction or of an arbitral tribunal in a binding arbitration (as the case may be), or otherwise than as contemplated
 in this Agreement and/or required by the Applicable Requirements.

(n) A failure of RTD to obtain for DTP the benefit of RTD Permits in accordance with the timetable agreed between RTD and DTP in accordance with the procedures set out in Attachment 9 (Project and Construction Management); but only to the extent that such failure is not caused by DTP's failure to make timely or proper applications, or the breach of or failure to comply with Applicable Requirements or the conditions attached to such RTD Permits.

(o) The discovery of any Unidentified Utility as described in Section 15.3 (Unidentified Utilities).

Any change in voltage of the primary power supply drawn from the Utility transmission network as set forth in Section
 (p) 12 (Traction Electrification System) of Part B (Infrastructure Requirements) of Attachment 7 (Design, Construction and Rolling Stock Requirements).

RTD has ordered or deemed to have ordered the suspension of any part of the Work in accordance with Section 5.13(c)(ii), (ii) RTD has ordered the suspension of any part of the Work in accordance with Section 23.2(a)(i) (other than as a result of DTP's failure to comply with this Agreement) or (iii) a determination in accordance with the Dispute Resolution Procedures that RTD has ordered the suspension of any part of the Work in violation of the requirements of Sections 23.2(a)(ii), 23.2(a)(iii) or 23.2(a)(iv).

A determination in accordance with the Dispute Resolution Procedures relating to a Dispute under Section 19.1 (RTD

- (r) Review) that RTD conditioned approval (including by way of rejection) of the Contract Data on comments and/or amendments that were not necessary for the Contract Data to comply with the applicable requirements of this Agreement.
- A determination in accordance with the Dispute Resolution Procedures relating to a dispute under Sections 22.5
   (besign/Build Contract) or 29.3 (O&M Agreement) that a proposed amendment, modification, variation or waiver to the Design/Build Contract or the O&M Agreement, as applicable, was not a Material Amendment.
- A determination in accordance with the Dispute Resolution Procedures, relating to a Dispute under Section 29.6
   (t) (Emergencies and Disruptions; RTD Intervention) that RTD's actions under Section 29.6 were attributable to or necessitated by any breach by RTD of its obligations under this Agreement.

The imposition by any Relevant Authority on DTP's possessory interest in the Eagle Project of any ad valorem property tax or possessory interest property tax under the Laws of the State of Colorado or (ii) the imposition by any Relevant Authority of any sales or use tax on construction and building materials, equipment, improvements and other property (including tangible personal property), that will be integrated into the Eagle Project and owned by RTD (as, or as

- (u) Including tanglate personal property), that will be integrated into the Eagle Project and owned by RTD (as, of as part of, without exclusion, the Commuter Rail Projects, DUS Systems, the Commuter Rail Maintenance Facility and the Rolling Stock); but specifically excluding materials, equipment, improvements and other property (including tangible personal property) relating to the Eagle Project that will be (A) owned by DTP, the Project Contractors or Subcontractors or (B) leased by DTP, the Project Contractors or Subcontractors from Persons other than RTD.
- (v) Any failure by RTD to comply with its obligations under any Replacement Rolling Stock Supply Contract or with its obligations under Section 31.1 (Rolling Stock Option).

Any interruption or interference to the Work or the Commuter Rail Services caused by the procurement, design, construction, operation or maintenance of any Other RTD Project, including the procurement, design and construction of any Concessionaire-operated Expansion, in each case undertaken by or on behalf of RTD (but only to the extent not undertaken by DTP), otherwise than as contemplated in this Agreement and/or required by the Applicable Requirements.

The issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Relevant Authority of competent jurisdiction under applicable Law which issuance is solely as a result of RTD's actions or omissions (and not DTP's actions or omissions), which injunction, order, restraint or prohibition materially affects RTD's or DTP's performance under this Agreement.

The execution by RTD of (i)(A) any Utility Relocation Agreement after the Technical Proposal Due Date on terms not consistent with the copy of such agreement attached in draft form in Part B of Annex 1 to Attachment 20 (Utilities); (B) any Inter-Governmental Agreement after the Technical Proposal Due Date on terms not consistent with the copy of such agreement attached in Annexes 1, 2 (other than Annex 2.4), 3 and 4 to Attachment 21 (Inter Governmental Agreements); (C) any Railroad Agreement after the Technical Proposal Due Date on terms not consistent with the copy of such Railroad Agreement attached in draft form in Annexes 1.3, 2.1, 2.2 and 2.3 to

(y) Attachment 22 (Railroad Agreements); or (D) any Railroad Agreement identified in Sections 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.10 or 1.11 of Attachment 22 (Railroad Agreements) after the Technical Proposal Due Date on terms not consistent with the terms of the agreement or draft form of agreement referenced therein, as applicable; or (ii) any Third Party Agreement after the Technical Proposal Due Date other than the agreements (including the agreements in draft form) attached in Annex 1 to Attachment 20 (Utilities), Annexes 1, 2, 3 and 4 to Attachment 21 (Inter-Governmental Agreements) and Annexes 1, 2 and 3 to Attachment 22 (Railroad Agreements) or otherwise identified in Sections 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.10 or 1.11 of Attachment 22 (Railroad Agreements).

The DUS As-Built Drawings reflect a design for the DUS Infrastructure that is materially different to the design set forth in the Existing DUS Infrastructure Design Documents, provided that such difference does not result from (i) any Concessionaire Proposed Change or (ii) any DUS Infrastructure Design Documents accepted or deemed accepted

by DTP in accordance with Section 24.2 (DUS Infrastructure Documents).

Any failure by RTD or any third party contractor acting on RTD's behalf to complete any RTD Retained Environmental Work by the completion date for such Environmental Clean-up Work set forth in the relevant Environmental Condition
 (aa) Clean-up Report delivered by DTP to RTD or (ii) any material interruption or interference with DTP's performance of its obligations under this Agreement caused by RTD or any third party contractor acting on RTD's behalf in performing

- The approval of a Voluntary Clean-Up Application and Materials Management Plan by the Colorado Department of
   (bb) Public Health and Environment in form and substance materially different from the draft copy of such plan attached at Exhibit 1 to Attachment 7 (Design, Construction and Rolling Stock Requirements).
- RTD does not increase the Maximum Annual Phase 1 Construction Payment Amounts in accordance with Section
   5.10(d) or (ii) DTP is unable to secure funds to finance the Phase 1 Excess Financing Amount within 90 days after the delivery of a Phase 1 Excess Financing Request,

but, in each case, only to the extent that:

any RTD Retained Environmental Work.

(i) such event or circumstance (and/or its effects and consequences on DTP) does not result from and is not contributed to by any breach by DTP of its obligations under this Agreement or any of the other Project Agreements or any negligent act or omission of DTP;

(ii) such event or circumstance has arisen notwithstanding DTP complying with its obligations under this Agreement, and in accordance with its obligations under Attachment 9 (Project and Construction Management) and the O&M Submittals; and

Source: O&M Agreement

(z)

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## **APPENDIX K**

## FORM OF CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking, dated as of December 1, 2020 (this "Undertaking"), is among the Regional Transportation District ("*RTD*"), Denver Transit Partners, LLC (the "*Company*") and Digital Assurance Certification, L.L.C., as dissemination agent (the "*Dissemination Agent*").

Section 1. Purpose of Undertaking. This Undertaking is being executed and delivered by RTD, the Company and the Dissemination Agent for the benefit of the holders and beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule. RTD is not obligated to make payments on the Bonds but is voluntarily executing this Undertaking because it is obligated under the Concession Agreement to make payments to the Company.

Section 2. Definitions. In addition to the definitions set forth in the Indenture or parenthetically defined herein, which apply to any capitalized terms used in this Undertaking unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Board" means the Board of Directors of RTD.

"Bonds" means the Series 2020A Bonds and the Series 2020B Bonds issued pursuant to the Indenture.

*"Company Annual Report"* means any annual report provided by the Company pursuant to, and as described in, Sections 3 and 4 of this Undertaking.

"Dissemination Agent" means, initially, Digital Assurance Certification, L.L.C., or any successor Dissemination Agent designated in accordance with this Undertaking.

*"Indenture*" means the Indenture of Trust, dated as of August 1, 2010, and amended and restated as of December 1, 2020, between RTD and The Bank of New York Mellon Trust Company, N.A., as trustee.

*"Loan Agreement"* means the Loan Agreement, dated as of August 1, 2010, and amended and restated as of December 1, 2020, between RTD and the Company.

"Material Events" means any of the events listed in Section 5 of this Undertaking.

*"MSRB*" shall mean the Municipal Securities Rulemaking Board. The MSRB's required method of filing is electronically via its Electronic Municipal Market Access (EMMA) system available on the Internet at <u>http://emma.msrb.org</u>.

"Official Statement" means the final Official Statement dated December 3, 2020, together with any supplements thereto, delivered in connection with the original issuance and sale of the Bonds.

"Participating Underwriter" means any original underwriter of the Bonds required to comply with the Rule in connection with an offering of the Bonds.

*"Rule"* means Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time (17 C.F.R. Part 240 § 240.15c2-12).

*"RTD Annual Report"* means any annual report provided by RTD pursuant to, and as described in, Sections 3 and 4 of this Undertaking.

"SEC" means the Securities and Exchange Commission.

*"Series 2020A Bonds"* means the Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A, in the aggregate principal amount of \$304,820,000.

*"Series 2020B Bonds"* means the Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B, in the aggregate principal amount of \$6,965,000.

## Section 3. Provision of Annual Reports

(a) RTD shall provide a RTD Annual Report to the Dissemination Agent not later than five (5) business days prior to the end of the ninth (9<sup>th</sup>) month following the end of RTD's fiscal year of each year, commencing with the ninth (9<sup>th</sup>) month following the end of RTD's fiscal year ending December 31, 2020. The RTD Annual Report may be submitted as a single document or as separate documents comprising a package and may cross-reference other information as provided in Section 4 of this Undertaking; *provided* that the audited financial statements of RTD may be submitted separately from the balance of the RTD Annual Report. RTD shall include with each submission of the RTD Annual Report to the Dissemination Agent a written representation addressed to the Dissemination Agent to the effect that such RTD Annual Report is the RTD Annual Report required by this Undertaking and that it complies with the requirements of Section 4 of this Undertaking.

(b) The Company shall provide a Company Annual Report to the Dissemination Agent not later than five (5) business days prior to the end of the ninth (9<sup>th</sup>) month following the end of the Company's fiscal year of each year, commencing with the ninth (9<sup>th</sup>) month following the end of the Company's fiscal year ending December 31, 2020. The Company Annual Report may be submitted as a single document or as separate documents comprising a package and may cross-reference other information as provided in Section 4 of this Undertaking; *provided* that the audited financial statements of the Company may be submitted separately from the balance of the Company Annual Report. The Company shall include with each submission of the Company Annual Report to the Dissemination Agent a written representation addressed to the Dissemination Agent to the effect that such Company Annual Report is the Company Annual Report required by this Undertaking and that it complies with the requirements of Section 4 of this Undertaking.

(c) The Dissemination Agent shall provide the RTD Annual Report and the Company Annual Report to the MSRB in electronic format as prescribed by the MSRB within four (4) business days after its receipt from RTD or the Company, as applicable.

(d) If either RTD or the Company is unable to provide to the Dissemination Agent a RTD Annual Report or a Company Annual Report by the date required in subsection (a) or (b), as applicable, the Dissemination Agent shall send a notice in substantially the form attached as Exhibit A to the MSRB.

(e) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the RTD Annual Report and the Company Annual Report the appropriate electronic format prescribed by the MSRB;

(ii) provide written notice to RTD and the Company at least forty-five (45) days prior to the date the RTD Annual Report or the Company Annual Report is due, stating that the RTD Annual Report or the Company Annual Report is due as provided in subsection (a) or (b) of this Section 3, as applicable; and

(iii) file a report with RTD and the Company certifying that the RTD Annual Report or the Company Annual Report has been provided to the MSRB pursuant to this Undertaking, stating the date it was provided and listing all the entities to which it was provided.

# Section 4. Content of Annual Reports

(a) The RTD Annual Report shall contain or incorporate by reference the following:

(i) a copy of RTD's annual financial statements prepared in accordance with generally accepted accounting principles audited by a firm of certified public accountants. If audited annual financial statements are not available by the time specified in Section 3(a) above, unaudited financial statements shall be provided as part of the RTD Annual Report and audited financial statements shall be provided to the Dissemination Agent when and if available;

(ii) historical financial information and operating data of the type shown in the tables identified in Exhibit B hereto; and

(iii) any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of RTD or related public entities, which are available to the public on the MSRB's website or filed with the SEC. RTD shall clearly identify each such document incorporated by reference.

(b) The Company Annual Report shall contain or incorporate by reference the following:

(i) a copy of the Company's annual financial statements prepared in accordance with generally accepted accounting principles audited by a firm of certified public accountants. If audited annual financial statements are not available by the time specified in Section 3(b) above, unaudited financial statements shall be provided as part of the Company Annual Report and audited financial statements shall be provided to the Dissemination Agent when and if available; and

(ii) any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of the Company, which are available to the public on the MSRB's Internet website or filed with the SEC. The Company shall clearly identify each such document incorporated by reference.

Section 5. Reporting of Material Events. The Company shall provide or cause to be provided, in a timely manner, to the Dissemination Agent, and the Dissemination Agent shall thereafter promptly provide notice, as instructed by the Company, of any of the following events with respect to the Bonds, to the MSRB:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax-exempt status of the Series 2020A Bonds;
- (g) modifications to rights of Owners, if material;
- (h) bond calls, if material, and tender offers;
- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of the Bonds, if material;
- (k) rating changes;

- (l) bankruptcy, insolvency, receivership or similar event;<sup>1</sup>
- (m) the consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (o) incurrence of a financial obligation of the Company, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Company, any of which affect Owners, if material; or
- (p) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Company, any of which reflect financial difficulties.

With respect to events (o) and (p) above, the term "financial obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

Section 6. Identifying Information. All documents provided to the MSRB pursuant to this Undertaking shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The obligations of RTD, the Company and the Dissemination Agent under this Undertaking shall terminate upon the earliest of: (a) the date of legal defeasance, prior redemption or payment in full of all of the Bonds; (b) the date that the Company or RTD shall no longer constitute an "obligated person" within the meaning of the Rule; or (c) the date on which those portions of the Rule which require this written undertaking are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds, which determination shall be evidenced by an opinion of nationally recognized bond counsel selected by the Company.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Undertaking, RTD, the Company and the Dissemination Agent may amend this Undertaking and may waive any provision of this Undertaking, without the consent of the holders and beneficial Owners of the Bonds, if such amendment or waiver does not, in and of itself, cause the undertakings herein (or action of any Participating Underwriter in reliance on the undertakings herein) to violate the Rule, but taking into account any subsequent change in or official interpretation of the Rule, as evidenced by an opinion of nationally recognized bond counsel selected by the Company and delivered to the Dissemination Agent. The Dissemination Agent shall provide notice of such amendment or waiver to the MSRB.

Section 9. Additional Information. Nothing in this Undertaking shall be deemed to prevent RTD or the Company from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any RTD Annual Report, Company Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Undertaking. If either RTD or the Company chooses to include any information in any RTD Annual Report or Company Annual Report or notice of occurrence of a Material Event in addition to that which is specifically required by this Undertaking, neither RTD nor the Company shall have any obligation under this Undertaking to update such

<sup>&</sup>lt;sup>1</sup> This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

information or include such in any future RTD Annual Report, Company Annual Report or notice of occurrence of a Material Event.

Section 10. Default. In the event of a failure of RTD, the Company or the Dissemination Agent to comply with any provision of this Undertaking, any holder or beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause RTD, the Company or the Dissemination Agent to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an event of default under the Indenture or the Loan Agreement, and the sole remedy under this Undertaking in the event of any failure of RTD, the Company or the Dissemination Agent to comply with this Undertaking shall be an action to compel performance. The Dissemination Agent shall have no power or duty to enforce this Undertaking, nor shall the Dissemination Agent have any responsibility for the content of any report, disclosure or notice provided by RTD or the Company. The Dissemination Agent shall have no liability to any person, including any holder or beneficial Owners of the Bonds, with respect to any reports, notices or disclosures provided to it by RTD or the Company hereunder.

Section 11. Resignation or Removal of Dissemination Agent. The present or any future Dissemination Agent may resign at any time upon 30 days' prior written notice to RTD and the Company. The Company may remove the present or any future Dissemination Agent upon 30 days' prior written notice to the Dissemination Agent and with the consent of RTD. RTD may remove the present or any future Dissemination Agent upon 30 days' prior written notice to the Dissemination Agent and with the consent of RTD. RTD may remove the present or any future Dissemination Agent upon 30 days' prior written notice to the Dissemination Agent and with the consent of the Company. Such resignation or removal shall take effect upon the appointment by the Company with the consent of RTD of a successor Dissemination Agent or upon execution by the Company of a written undertaking in which the Company agrees to assume all of the obligations of the Dissemination Agent hereunder, but in no event earlier than 30 days after such written notice of resignation or removal has been given. The new Dissemination Agent or the Company, as the case may be, shall forthwith give notice thereof to the MSRB.

Section 12. Compensation. As compensation for its services under this Undertaking, the Dissemination Agent shall be compensated or reimbursed by the Company for its reasonable fees and expenses (including without limitation, legal fees and expenses) in performing the services specified under this Undertaking.

Section 13. Miscellaneous Provisions. It is understood and agreed that any information that the Dissemination Agent may be instructed to file with the MSRB shall be prepared and provided to it by RTD or the Company, as applicable. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with RTD or the Company shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from RTD or the Company.

The Dissemination Agent undertakes to perform such duties and only such duties as are specifically set forth in this Undertaking and no implied covenants or obligations shall be read into this Undertaking against the Dissemination Agent. None of the provisions of this Undertaking shall require the Dissemination Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Dissemination Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel. The Dissemination Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care. The Dissemination Agent shall not be liable hereunder except for its negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by RTD or the Company and shall not be deemed to be acting in any fiduciary capacity for RTD, the Company or any other party.

Any entity into which the Dissemination Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Dissemination Agent shall be a party or entity succeeding to all or substantially all of the corporate trust business of the Dissemination Agent shall be the successor of the Dissemination Agent hereunder without the execution or filing of any paper with

any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

This Undertaking may be executed in counterparts.

Section 14. Beneficiaries. This Undertaking shall inure solely to the benefit of RTD, the Company, the Dissemination Agent, the Participating Underwriter and the holders and beneficial Owners from time to time of the Bonds and shall create no rights in any other person or entity.

Section 15. Governing Law. This Undertaking shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, RTD, the Company and the Dissemination Agent have caused this Undertaking to be executed in their respective names, all as of the date first above written.

# **REGIONAL TRANSPORTATION DISTRICT**

By		
Name:		
Title:		

# DENVER TRANSIT PARTNERS, LLC

By			
Name:			
Title:			

# **DIGITAL ASSURANCE CERTIFICATION, L.L.C.**, as Dissemination Agent

By		
Name:		
Title:		

## EXHIBIT A

## NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF FAILURE TO FILE ANNUAL REPORT

Name of Obligated Person: [Regional Transportation District ("RTD")][Denver Transit Partners, LLC (the "Company")].

Name of Bond Issue: Regional Transportation District (Colorado) Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A, dated as of their date of delivery, in the aggregate principal amount of \$304,820,000 (the "Series 2020A Bonds").

Date of Issuance: December 18, 2020 CUSIP No. [ ]

Name of Bond Issue: Regional Transportation District (Colorado) Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B, dated as of their date of delivery, in the aggregate principal amount of \$6,965,000 (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Bonds")

Date of Issuance: December 18, 2020 CUSIP No. [\_\_\_\_]

NOTICE IS HEREBY GIVEN that [RTD][the Company] has not provided a [RTD][Company] Annual Report with respect to the Bonds as required by the Continuing Disclosure Undertaking, dated as of December 1, 2020, among RTD, the Company and Digital Assurance Certification, L.L.C., as Dissemination Agent. [RTD][The Company] has represented that the [RTD][Company] Annual Report will be filed by [date].

Dated: \_\_\_\_\_, 20\_\_\_.

**Digital Assurance Certification, L.L.C.**, as Dissemination Agent

By: \_\_\_\_\_ Name: Title:

# EXHIBIT B

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Table II –	Operating Data
Table III –	Historical Sales Tax Revenues
Table IV –	Fifteen Largest Categories of Generators of Sales Tax 2019
Table V –	RTD Net Taxable Retail Sales
Table VI –	Statement of Obligations
Table VII –	Annual Debt Service Requirements and Amounts Subject to Appropriation
Table VIII –	Revenue and Capital Receipts by Source
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Table XII –	RTD Advertising and Ancillary Revenues
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### APPENDIX L

## FORM OF APPROVING OPINION OF BOND COUNSEL

December , 2020

Regional Transportation District 1660 Blake Street Denver, Colorado 80202

# \$304,820,000 REGIONAL TRANSPORTATION DISTRICT (COLORADO) TAX-EXEMPT NON-AMT PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020A

# \$6,965,000 REGIONAL TRANSPORTATION DISTRICT (COLORADO) TAXABLE PRIVATE ACTIVITY BONDS (DENVER TRANSIT PARTNERS EAGLE P3 PROJECT), SERIES 2020B

Ladies and Gentlemen:

We have acted as bond counsel to the Regional Transportation District (the "District"), in the State of Colorado, in connection with its issuance of the District's \$304,820,000 Tax-Exempt Non-AMT Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020A (the "Series 2020A Bonds") and \$6,965,000 Taxable Private Activity Bonds (Denver Transit Partners Eagle P3 Project), Series 2020B (the "Series 2020B Bonds" and together with the Series 2020A Bonds, the "Bonds") issued and secured pursuant to an authorizing resolution adopted by the Board of Directors of the District on November 17, 2020 (the "Bond Resolution"), and an Indenture of Trust, dated as of August 1, 2010 and amended and restated as of December 1, 2020 (the "Indenture"), between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). In such capacity, we have examined the District's certified proceedings and such other documents and such law of the State of Colorado and of the United States of America as we have deemed necessary to render this opinion letter. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them by the Indenture.

The proceeds of the Bonds will be used by the District to make the Series 2020 Loan pursuant to a Loan Agreement dated as of August 1, 2010 and amended and restated as of December 1, 2020 (the "Agreement") between the District and Denver Transit Partners LLC (the "Borrower). The Series 2020 Loan will be used to (a) repay the Series 2010 Loan made by the District to the Borrower under the Original Issuer Loan Agreement and the District will apply such loan repayment to the redemption and repayment in full of the outstanding Series 2010 Bonds and (b) solely with respect to the proceeds of the Series 2020B Bonds, pay or reimburse the prior payment of the Costs of Issuance of such Series 2020 Bonds.

Regarding questions of fact material to our opinions, we have relied upon the District's certified proceedings and other representations and certifications of the Borrower, public officials, and others furnished to us without undertaking to verify the same by independent investigation.

Based upon such examination, it is our opinion as bond counsel that:

1. The Bonds have been duly authorized by the District, duly executed and delivered by authorized officials of the District, and (assuming due authentication by the Trustee) are valid and binding, special, limited obligations of the District payable solely out of the loan payments to be made by the Borrower to the District under the Agreement, except to the extent otherwise provided in the Indenture and the Agreement.

2. The Agreement and the Indenture have been duly authorized by the District, duly executed and delivered by authorized officials of the District and (assuming due authorization, execution and delivery by the other parties thereto) are valid and binding obligations of the District enforceable against the District in accordance

with their respective terms. The opinion expressed in this paragraph 2 assumes (notwithstanding the provisions of Section 5.10 of the Indenture which designate the Uniform Commercial Code of the State of New York as the governing law thereof) that Section 5.10 of the Indenture is to be governed and construed under the laws of the State of Colorado.

3. The Indenture creates a valid pledge of the revenues, moneys and funds comprising the Trust Estate as security for the Bonds.

4. Under existing laws, regulations, rulings and judicial decisions, interest on the 2020A Bonds (a) is excludable from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Tax Code") except for interest on any 2020A Bond for any period during which it is held by a "substantial user" of the facilities refinanced with the 2020A Bonds or a "related person" as such terms are used in Section 147(a) of the Tax Code, (b) is not a specific preference item for purposes of the federal alternative minimum tax, and (c) is excludable from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect as of the date hereof. The opinions expressed in this paragraph assume the accuracy of certain representations and continuous compliance with the covenants contained in the District's certified proceedings, in certain documents and certifications of the Borrower, and in certain other documents and certain other certifications furnished to us.

5. Interest on the Series 2020B Bonds is not excludable from gross income for federal and State of Colorado income tax purposes.

The opinions expressed in this opinion letter are subject to the following:

The rights of the owners of the Bonds and the enforceability of the Bonds, the Bond Resolution, the Indenture, and the Agreement are limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

In this opinion letter issued in our capacity as bond counsel, we are opining only upon those matters set forth herein, and we are not passing upon the accuracy, adequacy or completeness of the Official Statement or any other statements made in connection with any offer or sale of the Bonds or upon any federal or state tax consequences arising from the receipt or accrual of interest on or the ownership or disposition of the Bonds, except those specifically addressed herein.

In rendering the foregoing opinions, we are not passing upon matters of (i) the corporate status of the Borrower, (ii) the power of the Borrower to execute and deliver the Agreement or to perform its obligations thereunder, (iii) the validity or enforceability of the Agreement against the Borrower, or (iv) the perfection of any security interests under the Uniform Commercial Code of the State of New York or other benefits of Section 5.10 of the Indenture.

This opinion letter is issued as of the date hereof, and we assume no obligation to revise or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

BUTLER SNOW LLP

### APPENDIX M

## **BOOK-ENTRY-ONLY SYSTEM**

The information in this section concerning the DTC and DTC's book-entry-only system has been obtained from DTC, and the Company, RTD and the Underwriters take no responsibility for the accuracy thereof.

The Depository Trust Company ("DTC") will act as the securities depository for the Bonds. The Bonds will be issued as fully registered securities in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3,500,000 issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for the physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtcc.org. Please note that these website addresses are included herein as active textual references only, and the information contained on (or accessed through) these websites is not incorporated herein and should not be construed as part of this Official Statement.

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "Beneficial Owner") will in turn be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults and proposed amendments to the Security Documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest in such maturity of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any such other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an omnibus proxy to RTD as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the omnibus proxy).

Principal and interest payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Trustee on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct or Indirect Participant and not of DTC, the Trustee or RTD, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of RTD or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to RTD or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, bond certificates are required to be printed and delivered to the Beneficial Owners.

The Company may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

Each person for whom a Direct or Indirect Participant acquires an interest in the Bonds, as nominee, may desire to make arrangements with such Direct or Indirect Participant to receive a credit balance in the records of such Direct or Indirect Participant, and may desire to make arrangements with such Direct or Indirect Participant to have all notices of redemption or other communications to DTC, which may affect such persons, to be forwarded in writing by such Direct or Indirect Participant and to have notification made of all interest payments. NEITHER RTD NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO SUCH DIRECT OR INDIRECT PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE BONDS.

So long as Cede & Co. is the registered owner of the Bonds, as nominee for DTC, references herein to the Owners of the Bonds or registered owners of the Bonds (other than under the sections "TAX MATTERS" and "CONTINUING DISCLOSURE OF INFORMATION" in this Official Statement) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference shall only relate to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they shall be sent by the Trustee to DTC only.

For every transfer and exchange of Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. The Company, without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Company determines that (i) DTC is unable to discharge its responsibilities with respect to the Bonds, or (ii) a continuation of the requirement that all of the outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC, is not in the best interests of the Beneficial Owners. In the event that no substitute securities depository is found by RTD or restricted registration is no longer in effect, bond certificates will be delivered.

The requirement for physical delivery of the Bonds in connection with a purchase in lieu of redemption will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Trustee's DTC account.

NONE OF RTD, THE UNDERWRITERS NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; (III) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE BONDS; (IV) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE BONDS; OR (V) ANY OTHER MATTER. [THIS PAGE INTENTIONALLY LEFT BLANK]





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