

Project Name: Commuter Rail Vehicle Cleaning Service

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## **Part IV**

### **Defined terms**

As used in this Part IV, the following terms shall have the meanings indicated.

**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.

**Applicable Requirements** means 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 Concessionaire, the Work, the Concessionaire-operated Components or the Eagle Project, including the Specified Requirements.

**Applicable Standards** means those codes and standards listed in Attachment 7 (*Design, Construction and Rolling Stock Requirements*) to the Concession Agreement.

**Concession Agreement** means the principal agreement in relation to the Eagle Project between RTD and Concessionaire.

**Concessionaire** means Denver Transit Partners, LLC.

**Contractor Content** means all Work Products or components thereof (excluding Contractor Tools and Proprietary Designs) developed by Contractor or any of its Subcontractors in connection with the performance of their obligations under this Agreement, including newly developed applications and systems technology.

**Concessionaire Indemnified Parties** means Concessionaire, any party involved in the provision of financing to Concessionaire for the Eagle Project, the technical advisor to the financing parties and each of their subsidiaries, affiliates, directors, officers, agents, employees, successors and assigns.

**Concessionaire-operated Components** means the component parts of the Eagle Project.

**Contractor Tools** means all business tools, methods or technology, including standardized application tools, system operating technology and software and related Intellectual Property Rights, in each case which are in existence and owned by Contractor or any of its Subcontractors prior to the date of this Agreement and utilized by Contractor in performing its obligations under this Agreement.

**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.

**Department Program** has the meaning given to it in Section 8-17.5-101, Colorado Revised Statutes.

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**Design/Build Contract** means the principal contract for the performance of work on the Eagle Project between the Concessionaire and Denver Transit Systems, LLC.

**Design/Build Subcontract** means the principal contract for the performance of work on the Eagle Project between Denver Transit Systems, LLC and Company.

**Design, Construction and Rolling Stock Requirements** means the requirements and provisions set out in Attachment 7 (*Design, Construction and Rolling Stock Requirements*) to the Concession Agreement.

**District** has the meaning given to it in the Regional Transportation District Act, Section 32-9-101 *et seq.*, Colorado Revised Statutes, as amended.

**DUS Infrastructure Contractor** means Kiewit Western Co., a Delaware corporation.

**Eagle Project** means the RTD project so designated.

**E-Verify Program** has the meaning given to it in Section 8-17.5-101, Colorado Revised Statutes.

**FasTracks Plan** means the public transportation expansion plan for the Denver metropolitan area developed by RTD, including the construction and operation of certain commuter rail lines.

**Final Completion Date** means the date on which RTD has issued the last final completion certificate to Concessionaire in relation to the construction of the Eagle Project.

**Financing Parties** means the persons, including bondholders, who are providing financing to Concessionaire for the Eagle Project and The Bank of New York Mellon Trust Company, N.A. as agent and/or trustee for such persons.

**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.

**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 or, as the case may be, operator seeking in good faith to comply with its contractual obligations, complying with all Applicable Requirements and engaged in the same type of undertaking as Contractor 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.

**Hazardous and Contaminated Substance Health and Safety Plan** has the meaning given to it in Section 8.6 (*Hazardous and Contaminated Substance Health and Safety Plan*) of Part A

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(General Requirements for Design, Construction and Rolling Stock) of Attachment 7 (Design, Construction and Rolling Stock Requirements) to the Concession Agreement.

**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 RTD from time to time to operate on the rail network that is part of the Eagle Project.

**Health, Safety and Security Requirements** means all Laws, rules, regulations, standards, practices and provisions of any Relevant Authority from time to time relating to health, safety and/or security applicable to the Work and/or the Concessionaire-operated Components and all requirements and provisions of a safety-related nature set out in any Permit or in this Agreement, including:

- (a) Section 8 (*Safety Management*) of Attachment 9 (*Project and Construction Management*) to the Concession Agreement; and
- (b) the Safety and Security Management Plan, the System Safety Program Plan, the Hazardous and Contaminated Substances Health and Safety Plan, the System Security Plan and the Safety and Security Certification Plan (in each case, once approved by RTD).

**Independent Engineer** means the independent engineer appointed by RTD and Concessionaire in accordance with the Concession Agreement, as replaced or succeeded from time to time.

**Information** means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party and such term includes all Work Products, analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

**Intellectual Property Rights** means patents, patent applications, inventions, trade marks, trade names, service marks, copyrights, 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.

**Inter-Governmental Agreement** means any agreement entered into between RTD and a Relevant Authority in relation to the Eagle 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 this Agreement including binding court and judicial decisions having the force of law, and includes any

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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.

**O&M Contractor** means Denver Transit Operators, LLC.

**Other RTD Project** means any rail line or other transportation facility that is constructed, operated and/or maintained by or on behalf of RTD during the period of the Concession Agreement other than the lines and facilities covered by the Concession Agreement.

**Other RTD Project Procurement Material** means any design brief, specification, information memorandum, request for qualification, request for proposal or other documentation issued or otherwise made available by RTD in connection with the tender or procurement of any Other RTD Project.

**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 Project to be issued by RTD, any Relevant Authority, any Utility Owner or any Project Third Parties.

**Person** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity, municipality, county, RTD or any other person having separate legal personality.

**Project Management Plan** means the plan so designated provided by Company to Contractor.

**Project Records** means full and complete books, documents, papers and records in respect of:

- (i) the construction, commissioning, completion, maintenance and operation (as applicable) of any Concessionaire-operated Components provided by Contractor, including the replacement or disposal of any material part thereof; and
- (ii) the performance of Contractor's obligations under this Agreement and personnel records,

including evidence of all prices, costs or rates negotiated and invoiced by Contractor in connection with the performance of this Agreement.

**Project Third Party** means each counterparty to a Third Party Agreement.

**Proprietary Designs** means proprietary products, components, subsystems and other items which are (a) in existence and owned by Contractor or any of its Subcontractors prior to the date of this Agreement, (b) maintained as trade secrets by, or protected by patents (including patent applications filed prior to the date of this Agreement to the extent such patents are thereafter issued) or copyrights by, Contractor or any of its Subcontractors in each case as owners thereof

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and (c) incorporated in the Concessionaire-operated Components or otherwise utilized or required in connection with the Eagle Project.

**Quality Management Plan** means the plan so designated provided by Company to Contractor.

**Railroad Agreement** means any agreement entered into between RTD and any Heavy Rail Operator in relation to the Eagle Project.

**Record Documents** has the meaning given to it in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

**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.

**Reviewing Authority** has the meaning given to it in Section 16.

**RTD** means Regional Transportation District, a public body politic and corporate and political subdivision of the State of Colorado, organized and existing under the terms of the Regional Transportation District Act, Section 32-9-101 *et seq.*, Colorado Revised Statutes, as amended.

**RTD Indemnities** means RTD and RTD's directors, officers, agents, servants, consultants, contractors and employees.

**RTD Related Project** means any RTD facility, project or works that is designed, constructed, operated or maintained by or on behalf of RTD to the extent such facility, project or works is integrated with or directly connected to the Eagle Project or any other part of the FasTracks Plan.

**Safety and Security Certification Plan** has the meaning given to it in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

**Safety and Security Management Plan** has the meaning given to it in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

**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) following the Actual DUS Access Date, the DUS Rail Segment Site, and each of (a), (b) and (c), individually, a **Site**.

**Source Code** means (a) the source code forming part of the Work Products and (b) any explanatory notes thereto necessary to enable RTD to perform the Work and/or to operate and maintain the Concessionaire-operated Components.

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**Specified Requirements** means the requirements set out in Part A of Attachment 15 (*Specified Requirements*) to the Concession Agreement, as such requirements are amended, modified and supplemented from time to time.

**Subcontract** means any contract (at any tier) entered into by Contractor or a Subcontractor with one or more third parties directly in connection with the carrying out of the Work or any of Contractor obligations under this Agreement, as amended or replaced from time to time in accordance with this Agreement.

**Subcontractor** means any third party, other than Contractor, that enters into a Subcontract.

**System Safety Program Plan** has the meaning given to it in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

**System Security Plan** has the meaning given to it in Attachment 9 (*Project and Construction Management*).

**Third Party Agreements** means:

- (a) the Inter-Governmental Agreements;
- (b) the Utility Relocation Agreements; and
- (c) the Railroad Agreements.

**Third Party Materials** means all materials, information, technology and methods owned by any party other than RTD, the Concessionaire, Company, Contractor and any of their respective subcontractors (of any tier), which are incorporated into the Work Products or are utilized in connection with the Concessionaire's performance of its obligations under the Concession Agreement or with Contractor's performance of its obligations under this Agreement, including pre-existing and newly developed standardized application tools and system operating technology not specifically commissioned for the Eagle Project.

**Use** has the meaning given to it in Section 14.

**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 Eagle Project.

**Utility Owner** means the owner of any of the Utilities located in or under or crossing any Site.

**Utility Relocation Agreement** means any agreement entered into between RTD and a Utility Owner in relation to the Eagle Project.

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**Work Products** means all Contractor’s design submittals, all Record Documents, the plans and programs to be prepared by the Contractor and all other drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code and object code), documents, materials, deliverables, data, inventions, whether or not patentable, and products prepared, developed, acquired, used or intended to be used by Contractor or any of its Subcontractors or suppliers in connection with the Eagle Project or which is otherwise necessary for the purposes of the carrying out the Work or operating any Concessionaire-operated Components provided by Contractor.

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"As used in Part III, "Owner" means RTD and/or Concessionaire and/or any Utility Owner, as applicable (as determined by Company)".

1. Non-interference

Contractor shall not (and cause its Subcontractors to not) interfere with the work of or cause any delay to the DUS Infrastructure Contractor, the O&M Contractor or any Utility Owner, or any other contractors which may be carrying out work in the land adjoining or near any Site for RTD, any Project Third Party or any Relevant Authority, and shall comply with the provisions of the Third Party Agreements in respect of such work.

2. QMP and PMP

Contractor shall comply with and monitor and enforce compliance with (and cause all Subcontractors to comply with and monitor and enforce compliance with) the Quality Management Plan during the performance of the Work. The Parties acknowledge that, pursuant to the Concession Agreement, RTD has the right to audit compliance by Contractor and Subcontractors with the Quality Management Plan from time to time, including the examination or inspection of Work or other activities on or off the Sites. Contractor agrees to provide, and cause its Subcontractors to provide, the access and assistance as RTD may reasonably require to discharge properly its audit functions.

Contractor shall comply with and monitor and enforce compliance with (and shall ensure that its Subcontractors complies with and monitors and enforces compliance with) the Project Management Plan.

3. Cooperation on other RTD projects

Following delivery by RTD of a written request for any Project Records, including Work Products, or other information in the possession or under the control of Contractor or the Subcontractors that is relevant or potentially relevant to any Other RTD Project, including for the purpose of preparing, including or making reference to such information in any Other RTD Project Procurement Material, Contractor shall (and shall cause the Subcontractors), promptly (and in any event within 30 days of delivery of RTD's request) deliver to Company all such Project Records and other information that Company may otherwise require Contractor to deliver or to procure the delivery of under the terms of this Agreement.

4. Standard of work

With respect to Contractor's performance of the Work, subject to the terms and conditions of this Agreement, (i) Contractor shall comply with, and shall cause the Work and all components thereof to comply with, Good Industry Practice, Applicable Requirements, Applicable Standards and this Agreement, (ii) all engineering and design services shall be provided in accordance with Good Industry Practice, Applicable Requirements, Applicable Standards and this Agreement, and



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(iii) the Project shall be constructed and erected in a good and workmanlike manner in accordance with the preceding clauses (i) and (ii).

#### 5. Safety

Contractor and Subcontractors shall comply with: (i) all Applicable Requirements relating to safety; (ii) the requirements set forth in Section 8 (*Safety Management*) of Attachment 9 (*Project and Construction Management*) to the Concession Agreement, including the preparation of all plans, procedures and programs required thereunder; and (iii) any Contractor safety requirements set forth in this Agreement, *provided* that such Contractor-specific requirements do not violate any Applicable Requirements. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Company and, to the extent mandated by Applicable Requirements, to all Relevant Authorities having jurisdiction over safety-related matters involving the Eagle Project or the Work. Contractor shall, if required by Company, prior to commencing construction, designate a safety manager as required by Section 8.7.3 of Attachment 9 (*Project and Construction Management*) to the Concession Agreement with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work.

#### 6. Federal and State requirements

In addition to complying with all other applicable Laws, in performing the work, Contractor shall comply, and cause all Subcontractors to comply, with the Specified Requirements, rules and regulations promulgated by the FTA and FRA applicable to the work or the Eagle Project, and the FTA's Public-Private Partnership Pilot Program (Penta-P) (as described in 72 Fed. Reg. 2583 (January 10, 2007)).

#### 7. Required terms in Subcontracts

Contractor is required and shall require each Subcontractor to agree in its relevant Subcontract, as the case may be:

(i) to comply, where applicable, with the Design, Construction and Rolling Stock Requirements, the provisions of Attachment 9 (*Project and Construction Management*) to the Concession Agreement, the Project Management Plan, the Quality Management Plan, the Health, Safety and Security Requirements, the Specified Requirements and Applicable Requirements;

(ii) not to impair the performance by Company of its obligations under this Agreement; and

(iii) that in the event of termination of this Agreement, RTD will be entitled to replace this Contract or, as the case may be, the Subcontract, with a contract on substantially similar terms as this Contract or, as the case may be, the Subcontract (including, in each case, by way of assignment) (subject to such amendments as may be necessary to reflect any legal requirements or limitations applicable to RTD) between Contractor or Subcontractor, as the case may be, and RTD.

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This Agreement may be freely assigned by Company to Concessionaire upon the request of Concessionaire following termination of the Design/Build Contract or to RTD upon the request of RTD upon termination of the Concession Agreement. In the event of termination of the Concession Agreement, RTD will be entitled to replace this Contract with a contract on substantially similar terms as this Contract (including by way of assignment) (subject to such amendments as may be necessary to reflect any legal requirements or limitations applicable to RTD) between Contractor and RTD.

#### 9. Lien waiver

At the time of each scheduled payment hereunder, Contractor shall provide an interim lien waiver in the form of Exhibit K-2 hereto. Contractor shall deliver to Company a final release and waiver of liens, in the form of Exhibit J-2 hereto, on the payment date next following the date on which final payment to Contractor is made.

#### 10. IPR warranties

Contractor represents, warrants and guarantees that:

(i) any Contractor Content, Contractor Tools, Proprietary Designs or Third Party Materials provided by Contractor are original to Contractor or the Subcontractors, and do not infringe the Intellectual Property Rights or proprietary rights of any third party;

(ii) Concessionaire's or RTD's Use of the Contractor Content, the Contractor Tools, the Proprietary Designs and any Third Party Materials shall not infringe the Intellectual Property Rights or proprietary rights of any third party (excluding any modification or creation of derivative works by Concessionaire or RTD that constitutes the sole cause of such infringement); and

(iii) the performance by Contractor and the Subcontractors (including their respective agents, consultants and contractors) of its responsibilities under, pursuant to, or arising from this Agreement and/or the provision or operation of the Concessionaire-operated Components shall not infringe the Intellectual Property Rights or proprietary rights of each other or any third party.

#### 11. IPR indemnity

Contractor shall be liable for and shall fully indemnify, save harmless and defend the Company to the maximum extent permitted by Law from and against all damages, whether direct or indirect, that Company may suffer or incur arising out of a breach of Contractor's warranties set out in Section 10 or otherwise out of any Claims arising out of allegations of an infringement of Intellectual Property Rights or other proprietary rights as described in Section 10.

Contractor shall, at its own cost, provide such cooperation and assistance and take such action and institute such proceedings as Company requests in the event of any Claim as described

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under the previous paragraph and shall assist Company in resolving queries concerning the ownership and licensing of the Contractor Content, the Contractor Tools, the Proprietary Designs and any Third Party Materials and the Intellectual Property Rights therein.

Each Subcontract shall require each of the Subcontractors to indemnify Concessionaire and the RTD Indemnitees in the same manner and to the same extent as provided for in this Section 11.

If, in any claim, suit or proceeding identified in this Section, a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, either replace the infringing Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Contractor is unable to do so within a reasonable time, Contractor shall promptly make every reasonable effort to secure for Concessionaire or any of the Concessionaire Indemnified Parties a license, at no cost to Concessionaire or the Concessionaire Indemnified Parties, authorizing continued use of the infringing Work.

#### 12. Ownership of documents

Contractor agrees that any Work Product and documents prepared or required to be prepared by Contractor shall be the sole and exclusive property of Company, RTD and Concessionaire and shall not be used by Contractor in connection with any other project without Company's prior written consent. The foregoing does not apply to Contractor's pre-existing technical experience, expertise, standard formats or the like. Contractor agrees that all such documents, as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials which are supplied by Company and come into the possession of Contractor, shall be delivered to Company at the earlier of completion of the Work or termination of the Work hereunder if not previously delivered hereunder, except to the extent Company shall instruct Contractor not to deliver such materials. Company may not copy or disseminate such materials in connection with any project other than the Eagle Project unless Contractor's name is deleted from such materials.

#### 13. Use of Documents by Contractor

Contractor shall be entitled to retain and use solely and specifically in connection with the Work hereunder and for enhancement of its engineering files a reproducible set of any Work Product and documents delivered to Company by Contractor.

#### 14. Intellectual Property

Contractor shall provide (and shall cause the Subcontractors to provide) Company (and, if directed by Company, to RTD) with copies of all Work Products and related documentation prepared in connection with the Project (i) in native format, which is the original format in which materials were developed and maintained (including, if available, in electronic or digital format)

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and (ii) as Company may reasonably request in another format suitable for future Use as anticipated by this Agreement. For the purposes of this Section, the term *Use* means the right to use, make, import, reproduce, publish, display, modify, create derivative works from, or otherwise exploit the items identified below and Intellectual Property Rights in or to all or any part of such items. Concessionaire, Company and RTD shall have the right to, and Contractor acknowledges Concessionaire's and RTD's right to, Use all or any part of the Work Products, Contractor Content, Third Party Materials, Contractor Tools, and Proprietary Designs in accordance with and subject to this Section. Contractor shall provide (and shall cause the Subcontractors to provide) all documentation and licenses, information, materials and assistance reasonably required by Company to exercise the rights and licenses granted herein, including (i) any additional licenses needed for new developments or additions.

Contractor hereby grants (and shall cause the Subcontractors to grant) to Company, Concessionaire and RTD, for the benefit of Company, Concessionaire and RTD and the FTA, a fully paid-up, royalty-free, non-exclusive, irrevocable, perpetual license, with the right to sub-license, limited to the territory of the United States of America, to Use Contractor Content for the Eagle Project, any RTD Related Project, and direct purposes of the United States federal government as required by the FTA.

Contractor shall obtain (and shall cause the Subcontractors to obtain), on Company's, Concessionaire's and RTD's behalf, all necessary rights and licenses for the Third Party Materials in accordance with this Section. Contractor shall provide to or obtain for (and shall cause the Subcontractors to provide to or obtain for) Company, Concessionaire and RTD all rights and licenses necessary for Company, Concessionaire, RTD and its sublicensees and contractors to Use the Third Party Materials for the purposes of the Eagle Project, *provided* that such right to Use shall not include the right to create derivative works from Third Party Materials comprised of software or Source Code. Contractor shall (and shall cause the Subcontractors to) (i) assign or transfer to Company, Concessionaire and RTD such rights and licenses in and to the Third Party Materials as may validly be assigned or transferred by Contractor to Company, Concessionaire and RTD, (ii) acquire for Company, Concessionaire and RTD a direct grant of rights or a license to Company, Concessionaire and RTD in and to the Third Party Materials, (iii) sublicense to Company, Concessionaire and RTD rights and licenses in and to the Third Party Materials, or (iv) take such other action as may be necessary for Company, Concessionaire, RTD and its sublicensees and contractors to have the rights and licenses to Use the Third Party Materials for the purposes of the Eagle Project in accordance with the immediately preceding sentence. All actions by Contractor under this Section shall be at the cost and expense of Contractor or the relevant Subcontractor (other than the cost for any additional sublicenses required by Company, Concessionaire or RTD other than for Company, Concessionaire or RTD itself, as the case may be, the cost and expense of which shall be borne by Company, Concessionaire or RTD, as the case may be) and all grants and licenses, and actions taken by Contractor hereunder shall be in form and substance reasonably acceptable to Company, Concessionaire and RTD.

Contractor hereby grants (and shall cause the Subcontractors to grant) to Concessionaire and RTD a fully paid-up, royalty-free, non-exclusive, irrevocable, perpetual license, with the right to sub-license, limited to the territory of the United States of America, to Use the Contractor Tools

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and the Proprietary Designs for the purposes of the Eagle Project and any RTD Related Project (as such term is defined in the Concession Agreement) that is a commuter rail project, but only to the extent reasonably necessary to effect systems integration with the Eagle Project.

Contractor agrees to written assignments or licenses as necessary to effect the rights and licenses granted to Company, Concessionaire and RTD herein (including for the benefit of the FTA), at no additional cost to Company, Concessionaire and RTD, and shall provide copies of such documents to Company, Concessionaire and RTD upon request.

Except for its own internal use, Contractor shall not and shall not authorize any other Person, and shall ensure that its Subcontractors shall not, publish or reproduce Contractor Content in whole or in part, or in any manner or form, without the prior written consent of Concessionaire until such time as Concessionaire and RTD has either released or approved the release of such Contractor Content to the public.

Concessionaire and Contractor each undertakes at the request of the other and at no charge to execute all documents and to do all acts which may be reasonably required by the other to bring into effect the provisions of this Section.

#### 15. Confidentiality

Except as set forth in this Section, each Party shall hold in confidence for a period ending five (5) years after the Final Completion Date, any Information. Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Section 15 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Section 15. Notwithstanding the foregoing, no Information may be disclosed in violation of the Concession Agreement, and, except to the extent doing so would violate the Concession Agreement, Information may be disclosed or provided:

(i) by either Party to its and its Affiliates' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors;

(ii) by RTD and Concessionaire, as allowed by them in accordance with agreements to which they are party;

(iii) by Company to its contract partners, to the extent required for the project.

(iv) by either Party to the extent:

it is required to disclose such Information pursuant to an Applicable Requirement or by any subpoena or similar legal process or by any Relevant Authority;

the other Party confirms in writing that such Information is not required to be treated as confidential;

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such Information is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement or wrongful act of the other Party;

such Party can show that such Information was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

such Information was received by such Party from a third party having no obligation of confidentiality with respect thereto;

such Information was at any time developed independently by such Party provided it is not developed from otherwise confidential information; or

such Information is required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting is required by a Relevant Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information;

*provided* that, in the cases of (i) to (iii) the persons to whom such disclosure is made will be informed of the confidential nature of such Information and will so provide such Information subject to the same or similar requirements to maintain confidentiality as contained in this Agreement; and *provided, further*, that Information provided by or on behalf of RTD may not be disclosed in violation of the Concession Agreement, and either Party providing any such Information to the other Party hereunder shall notify such other Party if such Information was originally provided by or on behalf of RTD.

## 16. Records

Contractor shall keep (and shall cause each of the Subcontractors to keep) Project Records.

Contractor shall permit and facilitate (and shall cause each of the Subcontractors to permit and facilitate) access, at any time, for audit, examination, review and inspection of the Project Records, including for the purposes of making excerpts and transcriptions. Such access shall be granted to Company, Concessionaire, RTD (to the extent provided in the Concession Agreement), any Relevant Authority, any Project Third Party (to the extent provided in the Third Party Agreements), or any of their respective authorized representatives or advisers (collectively, the "Reviewing Authorities") (each at its own cost). Any Reviewing Authority may at its own cost inspect (which inspection right shall include the right to take photographs; *provided* that as a condition to taking photographs, each Reviewing Authority must agree that such photographs may be used solely for the purpose of preparing reports for use by such Reviewing Authority and under no circumstances shall such photographs be used for any other purpose or otherwise disseminated outside of such Reviewing Authority except as required by Law) any elements of the Work in order to monitor the performance by Contractor of its obligations and responsibilities under this Agreement.

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Contractor acknowledges and agrees that in accordance with 49 CFR 633.15, it shall provide (and shall cause the Subcontractors to provide) the FTA with access to the Project Records and the Sites, as reasonably required by the FTA or RTD.

Contractor shall make (and shall cause the Subcontractors to make) available all Project Records and other records relating to appeals under the Dispute Resolution Procedures or to the litigation or the settlement of Claims arising under or relating to this Agreement until such appeals, litigation or Claims are finally resolved, in each case, unless (i) such records are exempt from disclosure under the applicable dispute resolution procedure or (ii) disclosure of such records would breach attorney-client privilege.

#### 17. Illegal Aliens.

Contractor shall comply, and shall ensure that all Subcontractors comply, in all material respects, with all applicable requirements of C.R.S. §§ 8-17.5-101 et seq..

Contractor shall not (i) knowingly employ or contract with an illegal alien to perform any work under this Agreement or (ii) enter into a contract with any Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform any work under such contract or this Agreement.

Contractor shall confirm, and shall ensure that all Subcontractors confirm, the employment eligibility of all employees who are hired in connection with Contractor's performance of its obligations under this Agreement through participation in either the E-Verify Program or the Department Program.

If Contractor participates in the Department Program, Contractor shall:

notify RTD (with a copy of such notice to Concessionaire) of participation in the Department Program and shall comply with C.R.S. § 8-17.5-102(c) and any other requirements of the Department Program;

no later than 20 days after hiring an employee who is hired in connection with Contractor's performance of its obligations under this Agreement, confirm to RTD (with a copy to Company), in a notarized certificate in form and substance satisfactory to RTD, that Contractor has examined the legal work status of such employee, retained copies of the documents required by 8 U.S.C. §1324a, and not altered or falsified the identification documents for such employees; and

consent (and does hereby consent) to United States Department of Labor and Employment audits conducted in accordance with C.R.S. § 8-17.5-102(5)(C)(III).

If Contractor obtains actual knowledge that a Subcontractor responsible for the performance of any part of Contractor's obligations under this Agreement employs or contracts with an illegal alien, Contractor must notify such Subcontractor and RTD (with a copy to Company) within three (3) business days of Contractor having such actual knowledge. If, within three (3) business days of receiving such notice, the Subcontractor does not stop employing or contracting with the illegal

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alien, Contractor shall terminate the agreement with the Subcontractor; *provided* that Contractor shall not be required to terminate such agreement with such Subcontractor if, during such three (3) business days after receiving the notice required in this Section 17, the Subcontractor provides information to RTD (with a copy to Company) to establish that the Subcontractor did not knowingly employ or contract with an illegal alien.

#### 18. Suspension

Contractor acknowledges that there are suspension provisions in the Concession Agreement and Design/Build Subcontract and agrees that if the Design/Build Subcontract is suspended, this Agreement shall be suspended for the same period.

#### 19. Site conditions

Contractor shall immediately report to Company any unknown environmental conditions (including any hazardous materials), unknown geological obstructions, unknown utilities, endangered species or archeological remains that it encounters at the Site. Except for geological obstructions, Contractor shall not disturb any such matters that it encounters without Company's consent and Contractor shall comply with Company's requirements and directions in relation thereto.

#### 20. DBE/SBE Requirements

Contractor shall comply with and shall ensure that each of its Subcontractors complies with the requirements of Sections 2 and 3 of Part B (*Disadvantaged and Small Business Enterprises Programs*) of Attachment 15 (*Specified Requirements*) to the Concession Agreement; **provided** that the Contractor shall not be in breach of this requirement if the Contractor can demonstrate to Company's reasonable satisfaction that Contractor and each of its Subcontractors, has exercised good faith efforts, as determined in accordance with 49 CFR Part 26, including appendices, to comply with such requirements.

#### 21. Insurance

##### Contractor-Provided Insurance

Before it commences any Work, Contractor shall provide and maintain or shall cause to be provided and maintained at its own cost the insurance coverages required of a Subcontractor or Design/Build Subcontractor described in Part A(II) (*Concessionaire Design-Build Period Insurances*) of Attachment 12 (*Insurance*) to the Concession Agreement and shall comply or shall cause to be complied with Parts A(I) and A(II) of Attachment 12 (*Insurance*) to the Concession Agreement and the terms of this Section 21. Contractor shall maintain or shall cause to be maintained such insurance in full force and effect until the last completion date to occur under this Agreement (or such longer periods as may be specified in of Attachment 12 (*Insurance*) to the Concession Agreement).



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### Owner Controlled Insurance Program

Contractor shall enroll (and cause its Subcontractors that are Enrolled Contractors (as defined in Attachment 12 (*Insurance*)) to the Concession Agreement, to enroll) in the Owner Controlled Insurance Program in accordance with the requirements of the OCIP Manual. Contractor shall comply with, and shall ensure that its lower-tier Enrolled Contractors comply with, the OCIP Manual which is hereby incorporated by reference into this Agreement and all subcontracts with Subcontractors.

### Responsibility for Deductibles and Premiums

Deductibles and premiums under all policies of insurance and all self-insured retentions shall be borne by Contractor unless expressly specified to be borne by a Person other than Concessionaire in Attachment 12 (*Insurance*) to the Concession Agreement.

### Failure to Procure Insurance

If Contractor fails to procure and maintain or fails to cause others to procure and maintain the required insurance, or any portion thereof, Company, Concessionaire or RTD shall have the right, but not the obligation, to procure and maintain the required insurance for and in their own name. If Company, Concessionaire or RTD procures any such insurance, Contractor shall promptly pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance. Neither Party shall violate or knowingly permit any violation of the coverage terms and conditions of such insurance. The required insurance, where applicable, shall include a severability of interest clause, and Contractor agrees that none of the insurance policies required under this Section 21 shall contain a clause that would void coverage due to the individual actions of any other insured parties.

### Contractor's or Rented Equipment

All equipment, supplies and materials belonging to Contractor or any Subcontractor used by or on behalf of Contractor or any Subcontractor for its performance hereunder or that is leased or loaned to any of them, shall be brought to and kept at the Sites at the sole cost, risk and expense of Contractor or such Subcontractor, and Company shall not be liable for loss or damage thereto, and any insurance policies carried by Contractor, any Subcontractor, or any third party on said equipment, supplies and materials shall provide for a waiver of the underwriters' right to subrogation against all RTD Indemnitees, Concessionaire, Company the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, parent companies, subsidiaries, Affiliates, employees, insurers and underwriters.

### Unemployment and Other Insurance Benefits

Contractor agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all taxes and contributions levied or assessed against Contractor for Unemployment Insurance and for Old Age Retirement Benefits, and for pensions and annuities now imposed, or hereafter imposed, by Relevant Authorities with respect to,

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assessed against or measured by wages, salaries or other remuneration paid to persons employed by Contractor in connection with the Work hereunder. Contractor further agrees to indemnify and hold harmless Company from any and all liability therefor.

#### Descriptions Not Limitations

The coverages referred to in this Section 21 are set forth in full in the respective policy forms, and the descriptions of such policies in this Agreement are not intended to be complete, nor to alter or amend any provision of the actual policies, and in matters, if any, in which the said descriptions may be conflicting with such instruments, the provisions of the policies of insurance shall govern; *provided, however*, that neither the content of any insurance policy or certificate nor Company's approval thereof shall relieve Contractor or any of its obligations under this Agreement.

#### Named Insureds: Continuity of Insurance

All insurance policies except Workers' Compensation and Employer's Liability insurance furnished or caused to be furnished by Contractor pursuant to this Section 21 shall:

name RTD (and with respect to liability policies only, its consultants, agents and contractors), Company, Concessionaire, the Financing Parties, the Project Third Parties, and Contractor, with respect to insurance caused to be furnished by others, as additional insureds to the extent set out in Part (A)(I) (*RTD Design/Build Period Insurances*) of Attachment 12 (*Insurance*) to the Concession Agreement; and

entitle RTD to maintain the all-risk policies specific to the Eagle Project in force after termination of this Agreement.

#### No Limitation of Liability

The required coverages referred to and set forth in this Section 21 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work hereunder.

#### Insurance Primary

All policies of insurance provided by Contractor pursuant to this Section 21 shall be written as primary policies, not contributing with, and not in excess of, the coverage that Company, Concessionaire, the Independent Engineer, RTD, the Financing Parties and their respective permitted assigns, successors, parent companies, subsidiaries and Affiliates may carry against the same hazards.

#### Other Insurance Requirements

Contractor shall ensure that at all times the companies issuing the insurance policies referred to in Attachment 12 (*Insurance*) to the Concession Agreement for which it is responsible are Qualifying Insurers.

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Contractor shall deliver to Company certificate(s) of insurance (and all required endorsements thereto) evidencing Contractor's compliance with the requirements set out in this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement, prior to the date on which such insurance is required to be maintained. Such certificate shall reference the Concession Agreement and the insurance cover to which such certificate applies. Contractor shall provide to Company copies of all policies of insurance taken out by Contractor in accordance with this Section [ ] and Attachment 12 (*Insurance*) to the Concession Agreement no later than 90 days after taking out such policy. Contractor shall at all times maintain on file current certificates of insurance evidencing proof of the coverage required under this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement.

Contractor shall ensure that all policies required to be taken out by this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement shall be endorsed to provide Company, Concessionaire and RTD with 60 days' prior written notice of any cancellation, reduction, or material change in the insurance coverage relating thereto.

At least once in each twelve-month period, Contractor shall deliver to Company:

certificates for the renewal or replacement of the insurance cover which Contractor takes out pursuant to this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement; and

a certificate of an appropriate officer of Contractor:

(A) confirming that all insurance policies taken out pursuant to this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement are in force on the date thereof;

(B) confirming the amounts and expiration date or dates of such policies and the names of the Qualifying Insurers issuing such policies;

(C) including certificates evidencing payment of any premiums then due, in a form reasonably satisfactory to Company; and

(D) stating that, to the extent coverage is available in the commercial insurance market, such policies comply with the requirements of this Section 21 and the relevant provisions of Attachment 12 (*Insurance*) to the Concession Agreement, to the extent applicable.

Contractor shall ensure that all insurances which Contractor is required to take out and maintain or cause to be maintained in accordance with this Section 21 and Attachment 12 (*Insurance*) to the Concession Agreement and any other policies taken out by Contractor or any Subcontractor in connection with the Eagle Project (including umbrella/excess liability insurance), contain a term to the effect that the insurers issuing the insurance policies have agreed to waive all rights of subrogation against RTD, Concessionaire and Company and to waive any right of the insurer to any set-off or counterclaim or any other deduction, save for outstanding premium under the relevant insurance only, whether by attachment or otherwise, in respect of any liability of any Person insured under any such policy.

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Capitalized Terms

Capitalized terms used in this Section 21 and not otherwise defined in this Agreement shall have the respective meanings generally ascribed to them in the commercial insurance industry in the United States.

22. Governing law

This Agreement shall be governed by the law of the State of Colorado.