

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF)
THE REGIONAL TRANSPORTATION)
DISTRICT FOR AN ORDER AUTHORIZING)
CONSTRUCTION AND OPERATION OF A)
NEW GRADE-SEPARATED PEDESTRIAN)
CROSSING OVER THE CONSOLIDATED)
MAIN LINE OF THE BURLINGTON)
NORTHERN SANTA-FE RAILWAY)
COMPANY AND THE UNION PACIFIC)
RAILROAD, AND THE LIGHT RAIL TRACKS)
OF THE REGIONAL TRANSPORTATION)
DISTRICT, IN THE VICINITY OF 350 SOUTH)
SANTA FE DRIVE, CITY AND COUNTY OF)
DENVER, COLORADO)

DOCKET NO. 08A-506R

PROCEDURAL STIPULATION 2

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Applicant, Regional Transportation District ("RTD"), ~~Intervenor, BNSF~~
Railway Company, ("BNSF"), Intervenor Union Pacific Railroad Company
("UPRR") and Alameda Station LLC, a Colorado Limited Liability Corporation and
an Interested party ("Alameda"), hereby enter into this Stipulation and in
consideration of all of the terms and conditions set forth herein, the sufficiency of
which consideration is hereby acknowledged, and hereby agree and stipulate as
follows:

1. The Application commencing this action was filed by RTD with the
Colorado Public Utilities Commission ("PUC") on November 13, 2008 and noticed
by the PUC on November 20, 2008, and requests authority to construct and
operate and maintain a new grade-separated pedestrian crossing over the
Consolidated Main Line of the BNSF and the UPRR, and the light rail tracks of

the RTD, in the vicinity of 350 South Santa Fe Drive, City and County of Denver, Colorado, which Application has been docketed at No. 08A-506R.

2. On December 9, 2009 and December 4, 2009, respectively, BNSF and UPRR intervened, sought to have the proceeding dismissed and opposed the granting of the relief requested, in part, because the RTD, as the Applicant will not construct, own, maintain and operate the structure and the metropolitan district that will construct, own, maintain and operate the structure has not yet been formed.

3. BNSF AND UPRR have no objections in principle to a pedestrian bridge at the location proposed, but desire that the applicant be the real party in interest and that certain conditions be met as to agreements, financial security and conformance with standards, all as set forth below. It is understood and agreed that neither BNSF nor UPRR will participate in funding this project as the project will be 100% funded by the new metro district.

4. RTD has an agreement to sell the property on which transit-oriented development is to be built to Alameda, which agreement requires a closing by January 31, 2009, and also requires Alameda to finance, construct and maintain the pedestrian bridge.

5. Alameda has represented to the parties to this action that it is in the process of forming a metropolitan district pursuant to CRS 32-1-101, et seq. in 2009 for the purpose of financing, constructing, owning, operating and maintaining the pedestrian crossing.

6. The Parties hereto wish to set forth procedural agreements, the end result of which will be granting the authority requested in Docket No. 08A-506R to the metro district to be formed by Alameda.

7. The Parties agree to jointly submit this Stipulation in Docket No. 08A-506R and request PUC approval of the Stipulation as the mechanism that, should all the steps be followed as outlined below, will result in a PUC Order awarding the metro district to be formed by Alameda the authority to construct the pedestrian bridge at Alameda Station.

8. The Parties agree that no construction on the proposed grade separated pedestrian crossing (the "Overpass") will commence until each of the conditions of this stipulation has been satisfied and a valid PUC order has issued to the new metro district.

9. Alameda will proceed with all deliberate speed with the formation of the Alameda Station Metropolitan District ("ASMD") for the purpose of financing and implementing the construction of the pedestrian crossing and will take all actions necessary to ensure the timely completion of that process. RTD will support Alameda's efforts upon receipt of a reasonable request from Alameda.

10. Upon formation of the ASMD, Alameda will provide proof of its formation to the PUC, RTD, BNSF and UPRR. Immediately following such proof being accepted by the PUC and the other parties, ASMD will seek leave to be substituted as the Applicant herein, in the place of RTD.

11. Also, upon formation of ASMD, and prior to any construction beginning on the project, Alameda will take all reasonable steps to cause ASMD, and ASMD shall agree to:

- a. Provide complete 100 % plans for the Pedestrian Bridge that meet all requirements and standards of both the BNSF and the UPRR.
- b. Reach agreement with BNSF on the following: BNSF's standard Overpass Agreement; compensation for the aerial rights to cross BNSF's right of way and compensation for any temporary construction license or easement; BNSF's standard Easement Agreement to be attached to the Overpass Agreement that will not be recorded; BNSF's standard Memorandum of Easement to be attached to the Overpass Agreement that may be recorded; BNSF's standard Exhibit C, Contractor's Requirements, to be attached to the Overpass Agreement, and have its contractor execute and deliver to BNSF BNSF's standard Exhibit C-1, Letter Agreement with Contractor, to be attached to the Overpass Agreement. In addition, ASMD shall agree to such other agreements, terms, and conditions including indemnification and insurance obligations as BNSF may reasonably require prior to commencement of construction of the Overpass
- c. Reach agreement with UPRR on the following: UPRR's standard overpass agreement for a pedestrian crossing, which will have the following agreed upon exhibits; location and detailed prints, UPRR's Exhibit B "Standard Terms and conditions to New Pedestrian Crossing

Agreement”, UPRR’s Exhibit B-1 “Insurance Requirements”, UPRR’s Exhibit C “Minimum Construction Requirements”, UPRR’s Exhibit D “Contractor’s Right of Entry Agreement”, UPRR’s Exhibit B to Contractor’s Right of Entry Agreement “Terms and Conditions”, UPRR’s Exhibit C to Contractor’s Right of Entry Agreement “Insurance Provisions”, UPRR’s Exhibit D to Contractor’s Right of Entry Agreement “Minimum Safety Requirements”, Contractor’s Haul Road Crossing Agreement for access to the crane pad, and a Temporary Construction Easement for the crane pad, along with appropriate compensation for the right to the temporary easements necessary for the crane pad. Additionally, ASMD will reach agreement with UPRR on compensation for the aerial rights to cross UPRR’s right of way and compensation for any other temporary construction licenses or easements along with UPRR’s standard temporary license or easement agreement, as necessary, and ASMD shall agree to such other agreements, terms and conditions including indemnification and insurance obligations as UPRR may reasonably require prior to the commencement of construction of the Overpass.

- d. Reach agreement with RTD on the following: construction, operation and maintenance agreements and such other agreements, terms and conditions including indemnification and insurance obligations as RTD may reasonably require prior to the commencement of construction of the Overpass.

12. Upon the above conditions being met and upon completion and execution of the agreements listed in items 11 b, c and d, above, ASMD shall cause the agreements and a complete set of 100% plans to be submitted to the PUC. Following a complete submission to the PUC by ASMD, BNSF and UPRR shall withdraw all objections contained in their interventions, whereupon ASMD shall request that an order issue granting ASMD the necessary authority to construct the pedestrian bridge.

13. Alameda has, as of the date of this Stipulation, provided 95% drawings and plans for the pedestrian bridge to UPRR and BNSF, and UPRR and BNSF each agree that each will review and provide comments on those drawings and plans by no later than January 31, 2009.

14. This Stipulation may be enforced only by the parties hereto or their successors. The parties agree to cooperate and otherwise perform this Stipulation in good faith, and shall execute such additional documents or instruments as may be reasonably necessary or required in order to properly carry out and effectuate the terms and provisions of this Stipulation.

15. This Stipulation shall not become effective until the PUC issues an Order approving the Stipulation, which Order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the parties to the Stipulation. In the event the PUC modifies this Stipulation in a manner unacceptable to any party hereto, that party may withdraw from the Stipulation and shall so notify the PUC and the other parties to the Stipulation in writing within 10 days of the date of the final PUC Order. In the event a party

exercises its right to withdraw from the Stipulation, the Stipulation shall be null and void and have no effect.

16. In the event this Stipulation becomes null and void, or in the event the PUC does not approve this Stipulation, this Stipulation as well as the negotiations undertaken in conjunction with this Stipulation shall not be admissible into evidence in any proceeding.

17. The parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest and that the results reflected in this Stipulation are just, reasonable and in the public interest.

18. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation. The parties represent that the signatories to the Stipulation shall have full authority to bind their respective parties to the terms of the Stipulation.

19. This Stipulation is a settlement of disputed and compromised claims and accordingly, this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning this Stipulation, shall be attached to any principle or methodology contained in this Stipulation.

20. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, which would have the effect of directly contravening the provisions of this

Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a Commission order approving this Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

21. This Stipulation shall be governed by and construed in accordance with the laws of the State of Colorado.

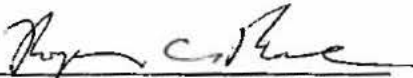
22. C.R.S. 40-6-109.5(2) requires the Commission to issue its decision within two hundred ten days of the date on which the Application was deemed complete, i.e., by July 17, 2009. To the extent the performances called for in paragraphs 7 through 12, above, are not completed in time for the Commission to issue the decision called for in paragraph 7, above, by July 17, 2009, Applicant will waive the statutory deadline in accordance with C.R.S. 40-6-109.5(3).

23. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. A facsimile signature on this Stipulation shall have the same force and effect of an original signature.

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WHEREFORE, the Parties have agreed upon the foregoing terms and conditions as of the date first above written.

REGIONAL TRANSPORTATION
DISTRICT

By: 
Roger C. Kane, #015083

Its: Attorney
1600 Blake Street
Denver, Colorado 80202
(303) 299-2209

ALAMEDA STATION, LLC

By: _____

Its: _____

BNSF RAILWAY COMPANY

By: _____

Its: _____

UNION PACIFIC RAILROAD
COMPANY

By: _____

Its: _____

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WHEREFORE, the Parties have agreed upon the foregoing terms and conditions as of the date first above written.

REGIONAL TRANSPORTATION
DISTRICT

By: _____

Its: _____

BNSF RAILWAY COMPANY

By: _____

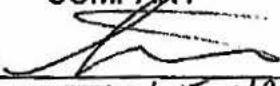
Its: _____

ALAMEDA STATION, LLC

By: _____

Its: _____

UNION PACIFIC RAILROAD
COMPANY

By: 
STEVEN E NAPPER

Its: SENIOR TRIAL COUNSEL

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WHEREFORE, the Parties have agreed upon the foregoing terms and conditions as of the date first above written.

REGIONAL TRANSPORTATION
DISTRICT

By: _____

Its: _____

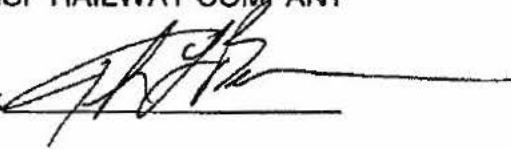
ALAMEDA STATION, LLC

By: _____

Its: _____

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BNSF RAILWAY COMPANY

By:  _____

Its: _____

UNION PACIFIC RAILROAD
COMPANY

By: _____

Its: _____

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REGIONAL TRANSPORTATION
DISTRICT

By: _____

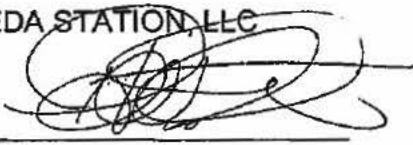
Its: _____

BNSF RAILWAY COMPANY

By: _____

Its: _____

ALAMEDA STATION, LLC

By:  _____

Its: Manager _____

UNION PACIFIC RAILROAD
COMPANY

By: _____

Its: _____

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