

R-7-2002

**RESOLUTION SETTING A PUBLIC HEARING  
ON THE ADVISABILITY OF ENTERING INTO A MONORAIL AGREEMENT TO  
GRANT TRANSIT SYSTEMS DEVELOPMENT, LLC, THE RIGHT TO  
INSTALL AND OPERATE A MONORAIL IN THE CITY**

WHEREAS, the Las Vegas Monorail Company, a Nevada nonprofit corporation (hereafter called "Monorail Company"), is engaged in the business of installing and operating a monorail for public transportation in Clark County, Nevada pursuant to a Monorail Franchise Agreement between Clark County and the Monorail Company's predecessor-in-interest dated December 2, 1998, as amended (hereafter called the "County Franchise"); and

WHEREAS, the plans for the monorail authorized by the County Franchise will take the Monorail near or to the border between the City and Clark County, at the intersection of Sahara Avenue and Paradise Road; and

WHEREAS, Transit Systems Development, LLC (hereafter "Transit Systems") and the City desire to enter into an agreement by which the monorail that is operated pursuant to the County Franchise will be extended north of Sahara Avenue into the City; and

WHEREAS, pursuant to NRS Chapter 705, the City is authorized to enter into an agreement for the installation and operation of a monorail within the City; and

WHEREAS, pursuant to NRS 705.695 the City Council, when entering into an agreement for the installation and operation of a monorail within the City, must provide notice and a public hearing regarding the proposed agreement in the same manner as for an ordinance proposed to be adopted by the City under circumstances other than in an emergency; and

WHEREAS, the City's ordinance adoption process requires that the City Clerk publish notice of deposit of a proposed ordinance in the City Clerk's Office for public examination and distribution upon request a minimum of ten days prior to its adoption by the City Council; and

WHEREAS, there is not a public hearing requirement in the City's ordinance adoption process as referenced in NRS Chapter 705, but to ensure compliance with the public hearing provisions of NRS Chapter 705, the City Council will hold a public hearing prior to entering into an agreement permitting the installation and operation of a monorail within the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY

1 OF LAS VEGAS, as follows:

2 1. That Transit Systems has requested that the City grant it the right to install and operate  
3 a monorail to transport passengers within the City.

4 2. That the purposes, character, terms, time and conditions that the City proposes to  
5 require in response to Transit Systems' request to install and operate a monorail within the City  
6 through December 2, 2048, are fully set forth in the proposed Monorail Agreement on file in the  
7 Office of the City Clerk of the City of Las Vegas, Nevada, which said proposed Monorail Agreement  
8 is available for inspection by members of the public. Said proposed Monorail Agreement is, by this  
9 reference, incorporated herein and made a part of this Resolution and Notice.

10 3. That a public hearing be, and hereby is, set for Wednesday, the 20th day of February,  
11 2002, in the City Council Chambers, City Hall Complex, 400 Stewart Avenue, Las Vegas, Nevada,  
12 at the hour of 9:00 a.m., for the purpose of hearing any objections or protests made by any person to  
13 the granting Transit Systems the right to install and operate a monorail within the City pursuant to the  
14 proposed Monorail Agreement.

15 4. That all interested persons shall have, and they are hereby given, the right to appear  
16 and be heard on the question of the advisability of granting Transit Systems the right to install and  
17 operate a monorail within the City pursuant to the proposed Monorail Agreement at the place, date  
18 and hour specified for the public hearing in paragraph 3 of this Resolution and Notice, or at any  
19 subsequent time to which said public hearing may be adjourned.

20 5. That the notice provided by this Resolution and Notice is reasonably calculated to  
21 inform each interested person of his or her opportunity to appear and be heard on the question of  
22 granting Transit Systems the right to install and operate a monorail within the City pursuant to the  
23 proposed Monorail Agreement and that the City Clerk therefore, be, and she hereby is, authorized,

24 ...

25 ...

26 ...

27 ...

28 ...

1 empowered and directed to cause a copy of this Resolution and Notice to be published in full in the  
2 Las Vegas Review Journal not later than the issue published on the 9th day of February, 2002.

3 PASSED, ADOPTED and APPROVED this 6th day of February, 2002.

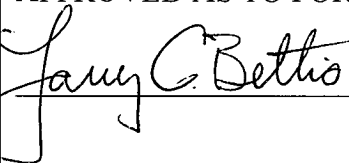
4 CITY OF LAS VEGAS

5  
6 By   
OSCAR B. GOODMAN, Mayor

7 ATTEST:

8   
9 BARBARA JO RONECUS, City Clerk

10 APPROVED AS TO FORM:

11  1-23-02  
12 Date

# **Monorail Agreement**

**Between**

**City of Las Vegas**

**And**

**Transit Systems Development, LLC**

## TABLE OF CONTENTS

| <u>Section</u> | <u>Title</u>                                                        | <u>Page</u> |
|----------------|---------------------------------------------------------------------|-------------|
| SECTION 1.     | DEFINITIONS .....                                                   | 2           |
| SECTION 2.     | TRANSFER OF RIGHTS TO MONORAIL COMPANY .....                        | 5           |
| SECTION 3.     | GRANT OF AUTHORITY TO USE RIGHTS-OF-WAY .....                       | 5           |
| SECTION 4.     | NON-EXCLUSIVITY AND DURATION OF AGREEMENT .....                     | 7           |
| SECTION 5.     | GENERAL CONDITIONS .....                                            | 7           |
| SECTION 6.     | PERMITS, LICENSES AND APPROVALS .....                               | 8           |
| SECTION 7.     | INSTALLATION REQUIREMENTS .....                                     | 9           |
| SECTION 8.     | OPERATING REQUIREMENTS .....                                        | 10          |
| SECTION 9.     | COMPETING TRANSPORTATION FACILITIES .....                           | 11          |
| SECTION 10.    | CITY'S USE OF MONORAIL FACILITIES .....                             | 11          |
| SECTION 11.    | FEES .....                                                          | 12          |
| SECTION 12.    | REPORTING REQUIREMENTS .....                                        | 12          |
| SECTION 13.    | REVOCATION, SUSPENSION AND PENALTIES .....                          | 13          |
| SECTION 14.    | ABANDONMENT OF MONORAIL .....                                       | 14          |
| SECTION 15.    | REMOVAL OF MONORAIL UPON TERMINATION OR DUE<br>TO EMERGENCIES ..... | 15          |
| SECTION 16.    | TRANSFERS AND ASSIGNMENTS .....                                     | 15          |
| SECTION 17.    | LENDERS' RIGHTS .....                                               | 15          |
| SECTION 18.    | INDEMNIFICATION .....                                               | 16          |
| SECTION 19.    | INSURANCE .....                                                     | 18          |
| SECTION 20.    | SECURITY FOR PERFORMANCE .....                                      | 18          |
| SECTION 21.    | RIGHTS RESERVED TO CITY .....                                       | 19          |
| SECTION 22.    | CITY INSPECTIONS .....                                              | 19          |
| SECTION 23.    | GIFTS .....                                                         | 19          |
| SECTION 24.    | NOTICES .....                                                       | 19          |
| SECTION 25.    | PUBLIC PURPOSE .....                                                | 20          |
| SECTION 26.    | DISCLAIMER OF CITY'S RESPONSIBILITIES FOR FUNDING ...               | 20          |
| SECTION 27.    | MISCELLANEOUS .....                                                 | 21          |
| SECTION 28.    | DISCLOSURE OF PRINCIPALS .....                                      | 22          |

**MONORAIL AGREEMENT**  
**between**  
**CITY OF LAS VEGAS**  
**and**  
**TRANSIT SYSTEMS DEVELOPMENT, LLC**

THIS MONORAIL AGREEMENT (hereafter called "Agreement") is executed to be effective the \_\_\_\_ day of \_\_\_\_\_, 2002, by the City of Las Vegas, Nevada, a political subdivision of the State of Nevada, acting by and through the City Council which is its governing body (hereafter called "City"), and Transit Systems Development, LLC, a Nevada limited-liability company (hereafter called "Owner").

WHEREAS, the Las Vegas Monorail Company, a Nevada nonprofit corporation (hereafter called "Monorail Company"), is engaged in the business of installing and operating a monorail for public transportation in Clark County, Nevada pursuant to a Monorail Franchise Agreement between Clark County and the Monorail Company's predecessor-in-interest dated December 2, 1998, as amended (hereafter called "County Franchise"); and

WHEREAS, pursuant to Nevada Revised Statutes (NRS) 705.610 et seq., the City is authorized to enter into an agreement for the installation and operation of a Monorail on the City's Rights-of-Way; and

WHEREAS, the plans for the Monorail authorized by the County Franchise will take the Monorail near or to the border between the City and Clark County, at the intersection of Sahara Avenue and Paradise Road; and

WHEREAS, the City and Owner desire to enter into an agreement by which the Monorail that is operated pursuant to the County Franchise will be extended north of Sahara Avenue into the City; and

WHEREAS, it may be necessary for Owner to obtain Federal and/or other funding for the extension of the Monorail into the City; and

WHEREAS, Owner intends to transfer its rights and interest in this Agreement to the Monorail Company after the necessary funding for the Monorail has been obtained, so that the control of the Monorail in both Clark County and the City will be consolidated into one entity.

THEREFORE, in consideration of the premises and of the mutual covenants and conditions contained herein, the City and Owner hereby agree to the following:

## **SECTION 1. DEFINITIONS**

Unless the context clearly indicates otherwise, the following words, terms and phrases shall have the following meanings when used in this Agreement:

- 1.1 "Certificate of Operation" means a document issued by the Director of the Department of Building and Safety, or his or her designee, on an annual basis certifying that the Monorail has been inspected and found to be in compliance with the manufacturer's requirements for operation and maintenance, the approved operations and maintenance manuals and other applicable requirements of the LVMC.
- 1.2 "City Council" means the City Council of the City of Las Vegas.
- 1.3 "City Manager" means the City Manager appointed by the City Council, or his or her designee.
- 1.4 "Commence Construction" or "Commencement of Construction" means the date on which the first physical construction of the Monorail in the City is initiated, after all necessary permits are issued for such work.
- 1.5 "Complete Construction" or "Completion of Construction" means the date on which the Monorail in the City is installed and operational in a manner approved by the City, as evidenced by a written Certificate of Operation issued by the City.
- 1.6 "Downtown Monorail District" means the area depicted in Exhibit "A".
- 1.7 "Effective Date" means the effective date of this Agreement, as specified in the first paragraph of this Agreement.
- 1.8 "Fixed Guideway" means a stationary rail facility used and occupied exclusively for mass public transportation.
- 1.9 "Force Majeure" means events which are beyond the reasonable control of Owner and not due to any negligence or fault on Owner's part, including, without limitation, those caused by acts of God, epidemics, quarantine, freight embargoes, terrorism, explosions, strikes, sabotage, riots or civil disturbances, acts of public enemies, unusually severe weather, natural disasters such as floods, earthquakes, landslides and fires, and the economic effect of such events.
- 1.10 "Install and operate" or "installation and operation" means to design, lay, construct, erect, equip, test, put into commission, maintain, operate, use to provide transportation service, repair, renew, replace, enhance the capacity of, modernize or improve a Monorail, or to cause or direct any of these activities.
- 1.11 "Intermodal facilities" means those facilities which are developed to facilitate the transfer of passengers from one mode of transportation to another.
- 1.12 "Lenders" means: (a) purchasers of debt obligations issued to finance or refinance the portions of the Monorail in the City; (b) any bank, trust company, corporation or other institution lending money to Owner to finance or refinance

the portions of the Monorail in the City; and (c) any municipal bond insurer, issuer of a letter of credit, surety or other security instrument supporting such debt obligations. Lenders' rights under this Agreement may only be exercised through an agent pursuant to Section 17 below.

- 1.13 "Lenders' Agent" means the trustee for all debt obligations issued to finance or refinance the Monorail in the City.
- 1.14 "LVMC" means the Las Vegas Municipal Code, 1983 Edition, as it may be amended from time to time.
- 1.15 "Monorail" is a generic term meant to describe a non-technology specific system to transport passengers that is installed and operated on an exclusive Fixed Guideway, including associated passenger stations, power propulsion systems, intermodal facilities, lots for parking motor vehicles, workshops and all other structures and facilities related to the Fixed Guideway. The term only applies to facilities and systems within the boundaries of the City and does not include facilities and systems in Clark County or a system to transport passengers between two end points with no intermediate stops.
- 1.16 "Monorail Company" means the Las Vegas Monorail Company, a Nevada non-profit corporation.
- 1.17 "Monorail Route" means the route within the Downtown Monorail District, as depicted in Exhibit B attached hereto, approved by the City Council for the installation of a Fixed Guideway and other Monorail facilities within City Rights-of-Way for the operation of the Monorail. The exact location of the Fixed Guideway and Monorail facilities within the Monorail Route shall be subject to issuance of any special use permits and compliance with all other applicable provisions of the LVMC.
- 1.18 "Operator" means the agent of Owner appointed by Owner to operate the Monorail in the City, subject to the provisions of Section 8 below.
- 1.19 "Owner" means Transit Systems Development, LLC, a Nevada limited-liability company, or any of such corporation's successors and assigns allowed pursuant to this Agreement.
- 1.20 "Person" means any natural person, corporation, limited-liability company, general partnership, limited partnership, trust or other legal entity.
- 1.21 "Public Improvement(s)" means any roadway, pavement, sidewalk, curb, gutter, landscaping, street light, foundation, pole and traffic signal conduit, water main, sanitary and storm sewer, tunnel, subway, people mover, bus shelter, affixed trash container, viaduct, bridge, underpass or overpass across, along, over or under any Rights-of-Way, or other such improvement that is used by the general public.



- 1.22 "Public Utility" means any person that provides electric energy or natural gas, telecommunications service, cable television service or interactive computer service, or who sells or resells personal wireless services, regardless of whether such person is subject to the regulations of or holds a certificate of public convenience and necessity from the Public Utilities Commission.
- 1.23 "Public Utility Facility(ies)" means any amplifier, antenna, cable, conduit, instrument, pipe, pole, transmitter, wire or other equipment used by a Public Utility to provide public utility service in the City.
- 1.24 "Rights-of-Way" means the space in, upon, above, along, across and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bridges and bicycle lanes, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City.

## **SECTION 2. TRANSFER OF RIGHTS TO MONORAIL COMPANY**

2.1 Owner shall have the right to transfer all of its rights and interest under this Agreement to Monorail Company, and the City shall release Owner from any liabilities under this Agreement, at any time upon 30 days advance written notice to the City of such transfer, provided that: (a) Owner is not in default of any of its obligations under this Agreement at the time of the transfer; (b) Monorail Company furnishes documentation to the City proving that it is the holder of the County Franchise at the time of the transfer; and (c) Monorail Company is not in default of any of its obligations under the County Franchise at the time of the transfer.

2.2 As a condition precedent to transferring Owner's rights and interest to Monorail Company, Monorail Company shall execute and deliver to the City a written acceptance of assignment by which it assumes all of the obligations of Owner under this Agreement, regardless of whether such obligations accrued prior to or will accrue after the transfer.

## **SECTION 3. GRANT OF AUTHORITY TO USE RIGHTS-OF-WAY**

3.1 Owner is hereby granted the right to install and operate a Monorail in, on, along, under or over the approved portions of the Rights-of-Way within the Monorail Route. Except as otherwise provided in this Agreement or applicable LVMC provisions, Owner shall have the right:

- (A) To establish and to revise from time to time the frequency of service and schedules of operation of the Monorail;
- (B) To charge and collect fares from passengers;
- (C) To establish and adjust from time to time the fares to be charged;

(D) To establish promotional and fare programs and to enter into arrangements with hotel and resort owners for discounted and/or free use of the Monorail by patrons;

(E) To display advertising and to establish concessions in connection with the Monorail, except for advertising that is installed on non-moving structures and that is easily visible to motorists or pedestrians utilizing the Rights-of-Way unless otherwise approved by the City Council;

(F) To lease space on the Monorail to vendors, merchants, advertisers and Public Utilities pursuant to this Agreement; and

(G) To make all improvements, upgrades and capacity enhancements to the Monorail (including the addition of trains) consistent with the terms of this Agreement and subject to the additional approvals required pursuant to the LVMC.

3.2 The privileges granted by this Agreement shall not impart to Owner any ownership right in any Rights-of-Way, or any right to obstruct or interfere with the flow of vehicular or pedestrian traffic in any Rights-of-Way.

3.3 Nothing in this Agreement shall be construed as giving Owner any right, privilege, permission or authority to engage in any activities other than those reasonably necessary to install and operate a Monorail and those described in Section 3.1 above. No right, privilege, permission or authority is granted by or to be inferred from this Agreement, except those specifically described herein.

3.4 Owner may not expand the Monorail or install and operate its facilities beyond the Monorail Route without first obtaining approval of an amended agreement from the City Council.

3.5 In satisfaction of the requirements of NRS 705.700(3)(a), the City and Owner hereby incorporate the provisions attached hereto as Exhibit C, addressing the compatibility standards of the Monorail for connection with a system of mass public transportation operated on a Fixed Guideway. Owner shall also meet the requirements of NRS 705.700(3)(b).

3.6 The City and Owner agree that no provision of this Agreement is in conflict with the intent or the language of NRS 705.610 through 705.700. Owner hereby waives any current or future claim to the contrary, including without limitation any claim pursuant to NRS 705.695(3) that this Agreement exempts Owner from obtaining any other construction, zoning or other permits from the City related directly or indirectly to the Monorail. Owner shall not raise in any forum any claim or defense to the contrary. The City shall not unreasonably withhold any permits related to the Monorail and shall use good faith, reasonable efforts to expedite the processing of such permits.

///

///

///

## **SECTION 4. NON-EXCLUSIVITY AND DURATION OF AGREEMENT**

4.1 This Agreement shall be non-exclusive except to the extent provided in Section 9 below.

4.2 Unless otherwise terminated pursuant to the terms specified herein, this Agreement shall be effective from the Effective Date through the earlier of the following dates: (a) December 2, 2048, the date on which the County Franchise is scheduled to expire; or (b) the date on which the County Franchise is terminated pursuant to the terms of that agreement.

## **SECTION 5. GENERAL CONDITIONS**

5.1 If Owner fails, for reasons other than Force Majeure or any other reason permitted by this Agreement or by applicable LVMC provisions, to Commence Construction of the Monorail in the City within seven years after the Effective Date, to Commence Construction of the Monorail in the City within one year after obtaining its financing for the Monorail, or to Complete Construction of the Monorail in the City within five years following Commencement of Construction, the City Council may, upon 45 days' written notice specifying such failure and after giving Owner and Lenders' Agent an opportunity to be heard, terminate this Agreement. The City Council may, in its sole discretion, thereafter reinstate this Agreement upon such terms as it deems appropriate.

5.2 In the event of any conflict between any applicable provisions of the LVMC and of this Agreement, the LVMC provision shall control.

5.3 Owner acknowledges that this Agreement is for the installation and operation of Monorail facilities only in the Rights-of-Way specified in the Monorail Route, and that installation in, on, under, along or above any other City property or private property may be permitted only through a separate agreement with the property owner or through the acquisition of the necessary property rights. Owner further acknowledges that the City has no obligations of any kind under this Agreement to acquire any property deemed necessary by Owner for the installation and operation of the Monorail, whether by purchase, the exercise of the City's eminent-domain rights or otherwise.

5.4 If any of the Monorail facilities unreasonably interferes with the proper operation of any pre-existing Public Utility Facilities in the Monorail Route, and if the City has the right to require the Public Utility Facilities to be relocated or otherwise adequately mitigated at the Public Utility Facilities owner's costs, the City shall do so. Owner shall not relocate any Public Utility Facility or Public Improvement, on either a temporary or permanent basis, without first having the legal right to do so. If Owner performs the relocation, it shall be performed only after consultation with the owner of the Public Utility Facilities or Public Improvements and in accordance with all applicable industry standards.

5.5 Owner shall not permit any other person to own or use Public Utility Facilities in, on, along, under or above the Monorail Route or within or on the Monorail unless the person so

owning or using such facilities has obtained all necessary business licenses, franchises, permits, rights-of-way licenses or other approvals from the City.

5.6 Owner shall not conduct any business activities that require background investigation for licensure or that require licensing, franchising or permitting under the LVMC without first obtaining such licensing, franchising or permitting, including but not limited to liquor sales, gaming, room rental and Public Utility services.

5.7 If the City desires Owner to remove or relocate any portion of the Monorail from the Rights-of-Way after Completion of Construction to accommodate a needed Public Improvement, the City shall: (a) first provide Owner with at least 90 days prior written notice and an opportunity to be heard before the City Council; and (b) design the Public Improvement so as to minimize the need to remove or relocate the Monorail. If both of these relocation conditions are satisfied and the Public Improvement is included in an adopted City capital improvement plan or master plan, then Owner shall bear and pay the full cost of such removal or relocation, including all lost revenues and increases in operating expenses for the Monorail ("the Relocation Costs"), but only to the extent that a qualified financial consultant who is mutually acceptable to Owner and the City Manager (neither of whose consent shall be unreasonably withheld) shall, within 90 days of the original notice and at no cost to the City, conclude in writing after reviewing the financial impact of the removal or relocation on Owner that such Relocation Costs will not have a material adverse effect on the ability of Owner to timely satisfy its debt obligations. Any share of the Relocation Costs that the City may agree to bear as a result of the financial consultant's conclusions must be approved by the City Council.

5.8 Owner shall not Commence Construction in the Rights-of-Way until Owner has provided to the City all of the following:

(A) Documentation confirming the legal status and ownership of Owner or, if applicable, its permitted transferee;

(B) Such finalized contract documents as deemed appropriate by the City, including but not limited to agreements with any design-build-operate team members;

(C) A traffic mitigation study that is consistent with current guidelines of local, regional and state governmental agencies; and,

(D) Documentation, as requested by the City, showing that the City is held harmless and indemnified for all agreed-upon acts of negligence, errors and omissions related to the development, financing, construction and operation of the Monorail.

## **SECTION 6. PERMITS, LICENSES AND APPROVALS**

6.1 The City hereby grants, contemporaneously with the approval of this Agreement, a master business license for the Monorail in accordance with LVMC Title 6.

6.2 Except as provided in Section 6.1 above, Owner shall be required, pursuant to Section 3.6 above and NRS 705.700(1) and (2), to apply for and obtain all permits, licenses and approvals required for the installation and operation of the Monorail under applicable LVMC provisions and City procedures, which will not be unreasonably withheld.

## **SECTION 7. INSTALLATION REQUIREMENTS**

7.1 Owner shall substantially meet the specifications as shown in Exhibit D attached hereto in its installation of the Monorail. Installation of the Monorail by Owner or any of its contractors, agents or representatives (all of which may be collectively referred to as "Owner" in this Section 7) shall be in accordance with all applicable standards provided in Exhibit E attached hereto and Sections 7.2 through 7.13 below.

7.2 Prior to any actual encroachment in the Rights-of-Way, Owner shall notify the Director of Public Works of the planned encroachment and shall be subject to his or her approval as to the time and method of such encroachment.

7.3 Prior to any actual encroachment in the Rights-of-Way, Owner shall obtain the approval of the Director of Public Works on the detailed engineering plans that show the final locations of all supporting structures and related Monorail facilities that will be installed and operated in the Rights-of-Way, including air space.

7.4 Prior to any actual encroachment in the Rights-of-Way, Owner shall comply with all terms and conditions established by the Director of Public Works resulting from the completed traffic impact analysis and mitigation study required by this Agreement.

7.5 All Public Improvements performed by Owner in the Rights-of-Way shall be inspected, completed and accepted in accordance with all applicable LVMC provisions and City procedures.

7.6 If Owner causes any damage to any of the Rights-of-Way, Owner shall, at its sole cost, promptly repair and restore the damaged area to the City's satisfaction, in accordance with all applicable LVMC provisions and City standards.

7.7 The Monorail shall be designed and constructed in accordance with all applicable Federal, State and local laws, rules and regulations, including the Americans with Disabilities Act and all building, electrical, fire and safety codes.

7.8 Design plans, calculations, operation and maintenance manuals, related documents and fees for the Monorail shall be submitted with a completed permit application to the City's Public Works Department, for review by the Directors of the Building and Safety, Public Works, Planning and Development and Fire Departments prior to the issuance of building permits. Where applicable, design plans, calculations, manuals and related documents shall be submitted to, and approvals shall be obtained from, other appropriate government agencies, including but not limited to the Las Vegas Valley Water District, the Clark County Sanitation District and the Clark County Health District.

7.9 Designs for the Monorail shall be sealed by a registered professional engineer and/or a registered professional architect, as may be appropriate.

7.10 All plan review, permit, inspection, operational certificate and other fees shall be paid by Owner in accordance with applicable LVMC provisions and City procedures, unless otherwise specified in this Agreement.

7.11 Inspections of the Monorail and issuance of building permits shall be in accordance with applicable LVMC provisions and City procedures, including any special requirements and/or third-party, quality-assurance inspections that the City may deem necessary due to the unique nature of the Monorail project.

7.12 A Certificate of Operation shall be issued and renewed annually in accordance with applicable LVMC provisions and City procedures, which shall be required for Owner to operate the Monorail. Owner's failure to operate the Monorail in accordance with all requirements of the Certificate of Operation may constitute grounds for the City to suspend the Certificate of Operation and Owner's rights under this Agreement.

7.13 After Completion of Construction, Owner shall maintain and provide to the Directors of the Public Works and the Building and Safety Departments, upon request and at no cost to the City, detailed and accurate as-built plans for the Monorail or any portions thereof.

7.14 Actions required of the City agencies and personnel pursuant to this Section 7 shall be performed with due diligence and without unreasonable delay.

## **SECTION 8. OPERATING REQUIREMENTS**

8.1 Owner may contract with another person to act as Operator of the Monorail, provided that: (a) Owner shall remain fully responsible to the City for compliance with all operational requirements in this Agreement, regardless of any liabilities of Operator to the City; and (b) the Operator of the Monorail in the City is the same as the Operator of the Monorail in Clark County, or is otherwise approved in writing by the City Manager.

8.2 Owner and Operator shall at all times operate and maintain the Monorail in accordance with the following provisions:

8.2.1 Owner shall at all times employ qualified individuals, or have qualified individuals available under contract, to timely meet all operational requirements imposed by this Agreement, the LVMC and Owner's Certificate of Operation.

8.2.2 If the City determines that Owner is not in full compliance with the operational requirements of this Agreement, the LVMC and Owner's Certificate of Operation, it shall notify Owner in writing of the non-compliance and specify the basis of such non-compliance and a reasonable time period within which the Monorail must be brought into compliance.

8.2.3 If Owner fails to bring the Monorail into compliance within the period specified, or if the non-compliance giving rise to such notice has resulted in, or presents an imminent threat of, personal injury or property damage, the City Manager may declare that continued operation of all or the affected portion of the Monorail is prohibited and issue to Owner a written notice of prohibited use. Such notice shall state the reasons for prohibiting use of the Monorail, or any portion thereof. Upon receipt of the prohibited-use notice, Owner shall immediately cease all operations of the Monorail necessary to comply with such notice.

8.2.4 Upon issuance of a prohibited-use notice, the City shall affix an out-of-service seal to the Monorail control panel or applicable portion of the Monorail, stating that the Monorail shall not be operated except as necessary for repair, testing or inspection. If Owner fails to adequately secure the Monorail, the City shall affix out-of-service seals across any entrances to the Monorail necessary to enforce the prohibited-use notice. No seals affixed to the Monorail pursuant to this Section shall be removed except by order of the City after the Monorail has been repaired, reinspected and certified by the City for operation.

8.2.5 When Owner has completed repairs of all deficiencies identified in the prohibited-use notice, and any other deficiencies discovered in the process of performing such repairs, Owner shall notify the City and request an inspection. The City shall perform the necessary inspections within one regular work day after receiving Owner's request. If the City confirms that all deficiencies have been corrected and that all necessary tests have been successfully completed, it shall remove the seals and permit the Monorail to resume operations.

## **SECTION 9. COMPETING TRANSPORTATION FACILITIES**

9.1 The City acknowledges that competitive Fixed Guideways may adversely affect Owner's revenues and materially impede the repayment of project debt. In consideration thereof, the City shall not, until such time as Owner has paid off all bonds issued to finance or refinance the Monorail in the City, grant another person the right to install and operate, or grant any other permits or approvals for, a Fixed Guideway System within the Downtown Monorail District, subject to connectivity provisions of NRS 705.700.

9.2 If any person other than the City, the Regional Transportation Commission or Owner proposes the installation and operation of a Fixed Guideway transport system in another corridor in the City that would connect in some manner to the Monorail, the City shall give notice of the proposal to Owner and provide Owner with a reasonable opportunity to submit, for consideration by the City Council, Owner's own application for an extension of this Agreement to such corridor. The City Council may, in its sole discretion and with or without conditions, grant or deny any such amendment.

## **SECTION 10. CITY'S USE OF MONORAIL FACILITIES**

10.1 Subject to Sections 10.2 through 10.4 below, at all times after the Commencement of Construction, the City shall have the right, at its own cost, to use any portions of the Monorail in the Rights-of-Way for purposes of attaching to, or otherwise incorporating into, the Monorail such other facilities as the City may reasonably determine to be necessary or appropriate for

purposes of signage and lighting. Any such use of the Monorail by the City shall be for non-commercial, public purposes only and may include directional or other traffic signage, traffic lights, parking meters and street lights. Installation of decorative lighting, canopies, trellises, planters, other landscaping, misters, bus stops, benches and trash containers will be subject to the approval of Owner, which shall only be withheld if Owner can show that such improvements will be detrimental to the Monorail. The City shall be responsible, at its own cost, for the design, installation, operation, maintenance, repairs and removal of any such improvements. If the City damages the Monorail by using it for any improvements pursuant to this Section 10, or by removing such improvements from the Monorail, the City shall be responsible, at its own cost, for repairing any damage to the Monorail. The City shall keep all such improvements in a clean, safe and proper condition at all times.

10.2 No rent or fees of any kind shall be due from the City to Owner for the City's use of the Monorail pursuant to this Section 10.

10.3 The indemnification provisions contained in Section 18 below shall not apply to claims arising out of the City's use of the Monorail pursuant to this Section 10.

10.4 Notwithstanding any provision of this Section 10 to the contrary, the City shall not use any portion of the Monorail for any of the uses specified herein if such use of the Monorail would result in the direct loss of operating revenues to Owner or increased operating costs to Owner, or if it could reasonably be expected to result in material safety hazards to the operation of the Monorail. Owner shall bear the burden of proving that the City's use of the Monorail will result in the direct loss of revenue to Owner or in increased operating costs for Owner. The City shall bear the burden of proving that its use of the Monorail will not result in material safety hazards in the operation of the Monorail.

## **SECTION 11. FEES**

The Rights-of-Way within the Monorail Route are valuable properties acquired, operated and maintained by the City at considerable expense to the City's residents. The rights and privileges granted by this Agreement to use the Rights-of-Way have a value, without the use of which it would be unfeasible for Owner to install and operate the Monorail. In consideration of such value, Owner shall pay all fees required for its Monorail master business license pursuant to LVMC Title 6.

## **SECTION 12. REPORTING REQUIREMENTS**

12.1 Each year during the term of this Agreement, Owner shall submit a written report to the City's Director of Finance and Business Services, within 180 days following the end of Owner's fiscal year, containing the following information:

(A) An audited financial statement, prepared in accordance with Generally Accepted Accounting Practices (GAAP);

(B) A narrative report on the status of the installation of the Monorail;



(C) Total ridership, in monthly and annual totals, in sufficient detail to determine ridership in persons per hour, per direction;

(D) Incidents of cessation of operation, both planned and unplanned, including the cause, duration and repairs required, if applicable;

(E) Accidents, emergencies and circumstances where injury or the threat of injury to persons occurred, or where material damage or the threat of material damage to property occurred;

(F) Any claims made to Owner's insurers and any claims paid by such insurers;

(G) Any lawsuits in which Owner is directly or indirectly involved and which have a material impact on Owner's ability to perform its duties under this Agreement; and

(H) A list of all persons using Owner's facilities pursuant to Section 5.5 above during the prior year.

12.2 Owner shall at all times retain all records and reports necessary for the City to conduct a full audit of Owner's performance under this Agreement for a period of at least the prior six years.

### **SECTION 13. REVOCATION, SUSPENSION AND PENALTIES**

13.1 Subject to Section 13.4 below, if Owner fails to comply with this Agreement or applicable Federal, State or local laws, rules or regulations, Owner shall be given 60 days from receipt of written notification of such non-compliance from the City to remedy such failure; provided that if Owner or Lenders' Agent submits a written request to the City within such 60-day period, the request shall be placed before the City Council and Owner and/or Lenders' Agent shall be given an opportunity to be heard. Such 60-day period shall be extended by the City Council if it determines that the cause of such failure may be corrected but cannot reasonably be corrected within such 60-day period. If the failure has not been remedied within the 60-day period or such extended period that is authorized by the City Council, the City Council may, in its sole discretion, choose to:

(A) Impose monetary fines and other penalties upon Owner, including but not limited to: (i) assessment of penalties upon Owner in an amount deemed appropriate by the City Council; (ii) for material non-compliance affecting passenger safety, suspension of installation or operation of the Monorail or any portion thereof; or (iii) restriction of any business activities of Owner under the Monorail master business license; and/or

(B) Make appropriate claims on any security provided pursuant to Section 20 below; and/or

(C) Suspend or revoke this Agreement or the Monorail master business license, and impose terms for reinstatement of either; provided that unless Owner has abandoned the Monorail as described in Section 14 below, the City shall not revoke this Agreement or the Monorail master business license, or suspend this Agreement or the Monorail master business license for a period beyond which Owner has cured its default, unless the City has obtained a final, non-appealable judgment from a court of competent jurisdiction that Owner has defaulted on its obligations under this Agreement or applicable Federal, State or local laws, rules or regulations.

13.2 Any such monetary fines or penalties shall be due within 30 days of written notification by the City, made payable to the City Treasurer, and delivered to the City's Director of Finance and Business Services. A late charge of 2% per month (or any portion thereof) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within 30 days of such written notification.

13.3 If a fine or penalty that has been imposed by the City Council is not paid within 30 days from the date of written notification to Owner, the City shall be authorized to deduct the amount of the fine or penalty and any late charges from the security provided for such purposes, pursuant to Section 20 below.

13.4 If Owner fails for any reason to maintain all insurance or security required by Sections 19 and 20 below, the City Manager may immediately suspend all of Owner's rights under this Agreement until such time as owner has cured such breach, by giving Owner written notice of such suspension.

#### **SECTION 14. ABANDONMENT OF MONORAIL**

In the event that:

(A) All or a material portion of the Monorail located in the City, or any portion of the Monorail in the Rights-of-Way, has not been in continuous operation transporting passengers for a period in excess of 180 days, unless such failure is due to Force Majeure, and

(B) Such failure to operate has not been remedied within 60 days after receipt by Owner and Lenders' Agent of written notice from the City specifying the same, provided that if Owner submits a written request to the City within such 60 days, the request shall be placed before the City Council and such 60-day period shall be extended by the City Council unless it determines that the cause of such failure could reasonably be corrected within 60 days, and

(C) Owner and Lenders' Agent is given an opportunity to be heard,

then the City Council may declare all or such portion of the Monorail to be abandoned and may terminate this Agreement and the Monorail master business license with respect to all of the Monorail or such portion of the Monorail so determined to be abandoned.

## **SECTION 15. REMOVAL OF MONORAIL UPON TERMINATION OR DUE TO EMERGENCIES.**

15.1 If the City revokes this Agreement in accordance with the provisions of this Agreement, if this Agreement expires without renewal, or if the City determines that the Monorail has been abandoned pursuant to Section 14 above, the City may, in its sole discretion, remove any portions of the Monorail in, on, along, under or over the Rights-of-Way. If the City's costs of removal of the Monorail and/or restoration of the Rights-of-Way to City standards exceed any amounts that the City receives for such removal and restoration, Owner shall be liable for any difference necessary to make the City whole. Owner shall pay all amounts due to the City for such removal and restoration within 30 days after receipt of the City's billing for the same.

15.2 If the City Manager reasonably determines that an emergency exists that involves imminent threat of personal injury or unreasonable property damage to any person and that requires immediate action by the City or any other public authority to remove, damage or destroy any portion of the Monorail in order to avoid such injury or property damage, the City may, in its sole discretion, take appropriate actions to deal with the emergency, regardless of the effect on the Monorail. The City shall not be liable for any losses or damages of whatever nature that Owner may sustain as a result of the City's reasonable actions in dealing with such emergencies.

## **SECTION 16. TRANSFERS AND ASSIGNMENTS**

16.1 This Agreement shall be a privilege that is in the public trust and personal to Owner. Owner's obligations under this Agreement involve personal services whose performance involves personal credit, trust and confidence in Owner. Except as permitted by Section 2 above, no transfer or assignment of this Agreement shall occur without the prior consent of the City Council, such consent not to be unreasonably withheld or delayed.

16.2 For purposes of this Agreement, "transfer or assignment" means the full or partial transfer of ownership, control or the right to control this Agreement, either directly or indirectly. The term "control" includes actual working control in whatever manner exercised, and the right to control shall include situations wherein that right is exercisable through intermediate persons. A transfer of control shall be deemed to occur whenever a majority of the voting control of Owner is acquired by any person other than a person who was in direct or indirect control of Owner on the Effective Date. The term "transfer or assignment" shall not include any mortgage, security interest, pledge or encumbrance of any of Owner's assets as security for monies borrowed for Monorail purposes, or any mortgage, security interest, pledge or other encumbrance of the stock or other ownership interest of Owner as security for monies borrowed for Monorail purposes.

## **SECTION 17. LENDERS' RIGHTS**

17.1 At any time during the term of this Agreement, Owner shall have the right, at its sole cost, to grant a security interest in, mortgage, pledge, hypothecate, grant a deed in trust or otherwise encumber, or assign revenues, issues and profits of the Monorail, or collaterally assign

its interest in this Agreement as security for any loans or other debt obligations for Monorail purposes.

17.2 Owner may designate in writing a Lenders' Agent for purposes of receiving copies of any notices of default issued to Owner by the City pursuant to this Agreement, provided that there shall be only one Lenders' Agent at any given time for all Lenders. Owner shall notify the City in writing of Lenders' Agent's address.

17.3 If the City issues a notice of default or abandonment under Sections 13 or 14 above, Lenders' Agent may, within the cure period specified in such notice, remedy the failure of Owner, and the City shall accept such performance by Lenders' Agent as if Owner had done the same.

17.4 Lenders' Agent may propose a substituted entity to act in place of Owner in the event of a default. The City shall have no obligation to approve a substituted entity unless that entity demonstrates to the City's satisfaction that it has the financial resources and experience to timely perform Owner's obligations under this Agreement. A substituted entity may not act in place of Owner for more than one year from the date approved by the City. Owner or Lenders' Agent may apply for transfer and assignment of this Agreement to the substituted entity, which may be approved by the City Council pursuant to Section 16 above.

17.5 If the City elects to terminate this Agreement in accordance with the provisions of this Agreement, Lenders' Agent shall thereupon have the option to have all rights and obligations of Owner under this Agreement transferred and assigned, pursuant to the requirements of Section 16 above, to Lenders' Agent or to a substituted entity approved by the City, effective only upon Lenders' Agent or substituted entity performing all of the following acts within 60 days of such termination: (a) executing an agreement, acceptable to the City, by which Lenders' Agent or substituted entity assumes all obligations of Owner under this Agreement; (b) paying all sums that are due under this Agreement at the time of such assumption; and (c) fully remedying all existing deficiencies under this Agreement and the LVMC.

## **SECTION 18. INDEMNIFICATION**

18.1 To the maximum extent permitted by Nevada law, Owner shall defend, indemnify and hold harmless the City and any of its boards, commissions, officers, employees and representatives from all damages, fines, liens, suits, claims, demands, actions, costs of investigation and litigation, reasonable attorneys' fees and expenses, consultants' fees and expenses, expert witnesses' fees and expenses, and judgments or liabilities of any kind arising out of or in any way connected with the installation and operation of the Monorail, except to the extent the foregoing is occasioned by the gross negligence or fault, bad faith or fraud of a City officer or employee.

18.2 The following procedures shall apply to all claims for indemnification under this Section:

18.2.1 If the City receives notice of or has actual knowledge of a claim that it believes is within the scope of indemnification owed to it under this Section 18, it shall by writing, as soon as practicable: (a) inform Owner of such claim; (b) send to Owner a copy of all written materials the City has received asserting such claim; and (c) notify Owner either that the defense of such claim is being tendered to Owner or that the City has elected to conduct its own defense for a reason set forth in Section 18.2.5 below.

18.2.2 If any insurer accepts tender of defense, Owner and the City shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under applicable insurance policies, then Sections 18.2.3 through 18.2.6 below shall apply.

18.2.3 If the defense is tendered to Owner, it shall, within 30 days of such tender, deliver to the City a written notice stating that Owner: (a) accepts the tender of defense and confirms that the claims are subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (b) accepts the tender of defense but with a "reservation of rights" in whole or in part, stating in detail the nature of such reservation; or (c) rejects the tender of defense for reasons stated in detail in its notice of rejection. If no written notice is delivered within such 30-day period, the tender of defense shall be deemed rejected.

18.2.4 If the City gives notice that it is tendering defense of a claim under Section 18.2.1(c) above, Owner shall have the right to select legal counsel for the City, and Owner shall otherwise control the defense of such claims, including settlement, and bear the fees and costs of defending and settling such claims. During such defense, Owner shall, at its own expense, fully and regularly inform the City of the progress of the defense and of any settlement discussions, and the City shall, at Owner's expense: (a) fully cooperate in said defense, (b) provide to Owner all materials and access to personnel that it requests as necessary for defense preparation and trial, and that or who are under the control of or are reasonably available to the City; and (c) maintain the confidentiality of all communications between it and Owner concerning such defense.

18.2.5 The City shall be entitled to select its own legal counsel and otherwise control the defense of any claim if: (a) the defense is tendered to Owner and it refuses the tender of defense, or fails to accept such tender within 30 days, or reserves any right to deny or disclaim such full indemnification thereafter; or (b) the City at any time reasonably determines that a conflict exists between it and Owner which potentially prevents Owner from presenting a full and effective defense, that Owner is otherwise not providing an effective defense in connection with the claims, or that Owner lacks the financial capacity to satisfy potential liability or to provide an effective defense. The City may assume its own defense pursuant to this Section 18.2.5 by delivering to Owner written notice of such election and the reasons therefor. A refusal of, or failure to accept, a tender of defense may be treated by the City as a claim against Owner.

18.2.6 If the City is entitled to and elects to conduct its own defense pursuant to this Section 18, then: (a) all reasonable costs it incurs in investigating and defending claims for which it is entitled to indemnification shall be reimbursed by Owner on a current basis; and (b)

the City shall have the right to settle or compromise the claims with Owner's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Owner's indemnity.

## **SECTION 19. INSURANCE**

19.1 Owner shall secure, maintain and provide certification of all insurance coverage in the amounts and kinds required by Page 1 of Exhibit F attached hereto prior to Commencement of Construction. Owner shall keep such insurance in effect at all times from Commencement of Construction until the time that the City issues its Certificate of Operation for the Monorail.

19.2 At all times after the City issues a Certificate of Operation for the Monorail, Owner shall secure, maintain and provide certification of all insurance coverage in the amounts, kinds and forms required by Page 2 of Exhibit F

19.3 The policies provided for above (except for professional liability policies) shall name the City and any of its boards, commissions, officers, employees and representatives as additional insureds and shall contain a provision that written notice of cancellation of or a material change in coverage shall be delivered to the City at least 30 days in advance of the effective date thereof. All policies shall be issued in a form and from a company acceptable to the City.

19.4 The City reserves the right at any time, subject to City Council approval, to increase the amounts or kinds of insurance required under this Agreement to the extent that it reasonably determines such additional coverage necessary and to the extent that such additional coverage is available to Owner on terms that are not commercially impracticable.

## **SECTION 20. SECURITY FOR PERFORMANCE**

Owner shall provide all of the following forms of security to the City in order to ensure the full performance of Owner's obligations under this Agreement:

20.1 Owner shall provide the City with the design drawings and technical specifications of the technology used in the Monorail, which the City shall have the irrevocable right to use in connection with the administration of this Agreement.

20.2 Prior to Commencement of Construction within the Rights-of-Way, Owner shall provide security, in a form and amount acceptable to the entities providing Monorail bond financing and consistent with the commitments to the Federal Transit Administration, to ensure: (a) that Owner will complete construction of the Monorail; and (b) the removal of all structures from the Rights-of-Way in the event Owner does not complete the Monorail in accordance with the terms of this Agreement. In the event the City Manager is concerned that such security is insufficient to protect the City's interest, the City Manager may demand additional security in a form and amount he or she deems reasonable, subject to City Council approval. Once the City Manager is advised in writing of the security required by the above lending entities, the City

Manager shall use due diligence in seeking the City Council approval for any additional security the City Manager deems reasonable.

20.3 The City may, upon written notice to Owner, increase the amount of the required security on January 1 of each year, based on the annual increase in the Federal All Urban Consumer Price Index (CPI-U) for the prior calendar year.

## **SECTION 21. RIGHTS RESERVED TO CITY**

The City reserves all of its rights to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City; and to grant multiple exclusive agreements for the operation of other Monorails in the City by other persons, subject to Owner's exclusive rights within the Downtown Monorail District granted herein.

## **SECTION 22. CITY INSPECTIONS**

The Director of the City's Building and Safety Department, or his or her designee, shall inspect all work performed by Owner relating to the rail structures, maintenance facilities, passenger stations and associated structures of the Monorail in the City. The Director of the City's Public Works Department shall inspect all work performed by Owner relating to facilities placed in the Rights-of-Way and any restoration of the Rights-of-Way. Owner shall notify the respective Directors when facilities and/or Rights-of-Way work or restoration is ready for inspection. Any inspection and subsequent approvals undertaken by the City pursuant to this Agreement are undertaken solely to ensure compliance with this Agreement and are not undertaken for the safety or the benefit of any individual or group of individuals as members of the public. Provisions in this Agreement dealing with inspection or approval by the City do not expand the City's general law duties.

## **SECTION 23. GIFTS**

No officer or employee of Owner shall offer to any officer or employee of the City, either directly or indirectly, any rebate, contribution, gift, money, service without charge or other thing of value whatsoever, except where given for the use and benefit of the City.

## **SECTION 24. NOTICES**

24.1 All notices required or permitted under this Agreement shall be in writing and be either personally delivered or sent by registered mail, return receipt requested. All notices shall be deemed to be received no later than two business days after mailing. Notices shall be directed

///

///

///

///

///

///

to the parties at the following addresses, or such address as either party may from time to time specify in writing to the other party in the manner specified in this Section 24:

|                 |                                                                                                                             |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------|
| TO THE CITY:    | City Manager<br>City of Las Vegas<br>400 Stewart Avenue<br>Las Vegas, Nevada 89101                                          |
| WITH A COPY TO: | City Attorney<br>City of Las Vegas<br>400 Stewart Avenue<br>Las Vegas, Nevada 89101                                         |
| TO OWNER:       | Robert N. Broadbent<br>Transit Systems Development, LLC<br>3800 Howard Hughes Parkway, Suite 920<br>Las Vegas, Nevada 89109 |

24.2 All notices sent to Lenders' Agent pursuant to Section 17 above shall be sent to the address provided in writing to the City by Owner. Owner shall notify the City of any change in the status of Lenders' Agent or in its address within 10 working days of such occurrence. Owner's failure to provide notification, and any resulting delay in receipt of notice by Lenders' Agent, shall not serve as cause for reduction or removal of any restriction, fine or penalty imposed by the City.

## **SECTION 25. PUBLIC PURPOSE**

All of the regulations provided in this Agreement are hereby declared to be for a public purpose and the health, safety and welfare of the general public. Any member of the governing body or City official or employee charged with enforcement of this Agreement, acting for the City in the discharge of his or her duties, shall not thereby render himself or herself personally liable; and such person is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his or her duties. Neither the City nor Owner, by accepting this Agreement, waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Agreement, including seeking injunctive relief in a court of competent jurisdiction. Such right to injunctive relief is expressly reserved, and all terms and conditions hereunder shall be enforceable through injunctive relief. Neither party shall be liable for any consequential or punitive damages, including lost profits.

## **SECTION 26. DISCLAIMER OF CITY'S RESPONSIBILITIES FOR FUNDING**

The City makes no representations, warranties or promises of whatever nature and disclaims any responsibility for or concerning the funding of the Monorail in the City. Owner shall be solely responsible for obtaining and repaying all loans, bonds and other funding of whatever nature associated with the Monorail in the City. Each preliminary official statement,



official statement and any other disclosure document delivered or otherwise circulated in connection with any loans, bonds or other funding sources associated with the Monorail, and each bond or other instrument by which Owner obtains funding for the Monorail shall contain the following statement in bold face and no smaller than 14-point type size, with only such insubstantial changes as the City Manager may approve in writing:

The City of Las Vegas, Nevada is not liable or responsible, legally, morally or otherwise, for any costs associated with repayment of the principal of or any interest on any loans, bonds or other funding associated with the construction, operation or maintenance of the monorail project, or any other expenses associated with such project, and the holders of any loans, bonds or other funding instruments shall not rely on any City involvement in the payment of such costs or other involvement with the project. The City has not assumed and has no duties to any investors with respect to the monorail project, its construction, operation, maintenance, financing, disclosures to investors, or monitoring any of the foregoing. By acceptance of a bond or other funding instrument, each individual holder of such loan, bond or other instrument waives all causes of action that he, she or it may otherwise ever have against the City or any of its elected or appointed boards, commissions, officials, employees, representatives or agents for any matter related directly or indirectly to any loans, bonds, funding instruments, disclosure statements or the monorail project.

## **SECTION 27. MISCELLANEOUS**

27.1 **Compliance with Laws.** Owner shall at all times comply with all Federal, State and local laws, rules and regulations applicable to this Agreement or the installation and operation of the Monorail.

27.2 **Applicable Law.** This Agreement shall be governed and interpreted according to the laws of the State of Nevada.

27.3 **Modification of Agreement.** This Agreement may not be modified except by express written agreement, duly authorized by the appropriate governing bodies or representatives of the parties.

27.4 **Waivers.** No obligation under this Agreement shall be deemed to be waived except by an express written waiver signed by an authorized representative of the party against whom such waiver is sought to be enforced. A waiver of any rights by either party with regard to any particular situation shall not constitute a waiver of such party's rights with regard to any other situation.

27.5 **Severability.** If any provision of this Agreement is for any reason held to be invalid or unconstitutional, in whole or in part, by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, such provision shall thereupon return to full force and effect without further action by either party and shall thereafter be binding on Owner and the City. If the terms of this Agreement are materially

altered due to changes in or rulings regarding governing law, then the parties agree to promptly use their best reasonable efforts to amend this Agreement so as to restore the original intent of the parties and to preserve the benefits bargained for by each party.

**27.6 Construction of Agreement.** This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions.

**27.7 Third-Party Beneficiaries.** This Agreement is not intended to create any rights, powers or interests in any third party, except to the limited extent that such rights are expressly conferred to third parties pursuant to Sections 13, 14 and 17 (Lenders' Rights) and Section 18 (Indemnification) above.

**27.8 Entire Agreement.** This Agreement constitutes the entire agreement between the City and Owner concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters. The parties acknowledge that no promises, warranties or representations of any kind have been made to each other which are not a part of this Agreement to induce either party to enter into this Agreement. The rights and obligations of this Agreement shall inure to the benefit of and be binding upon the parties' permitted successors and assigns.

## **SECTION 28. DISCLOSURE OF PRINCIPALS**

Pursuant to Resolution R-79-99 adopted by the City Council effective October 1, 1999, and amendments thereto by the City Council on November 17, 1999, Owner warrants that it has disclosed, on the form attached hereto as Exhibit G, all principals, including partners of Owner, as well as all persons and entities holding more than a 1% interest in Owner or any principal of Owner. If Owner, principals or partners described above are required to provide disclosure under Federal law (such as disclosures required by the Securities and Exchange Commission or the Employee Retirement Income Act) and attach current copies of such Federal disclosures to Exhibit G, the requirement of this Section shall be satisfied. Throughout the term of this Agreement, Owner shall within 10 days notify the City in writing of any material changes in the

///

///

///

///

///

///

///

///

///

///

///

///

///

above disclosure. Copies of new Federal disclosure filings shall also be sent to the City within 10 days of any such filing.

EXECUTED to effective on the date specified above.

CITY OF LAS VEGAS, NEVADA

OWNER

By: \_\_\_\_\_  
OSCAR B. GOODMAN, Mayor

By: Bob Broadbent  
Its: President

ATTEST:

\_\_\_\_\_  
BARBARA JO RONEUMUS, City Clerk

APPROVED AS TO FORM:

James G. Bettis 1-25-02  
Date

**LIST OF EXHIBITS**

- A. Downtown Monorail District – Sec. 1.6
- B. Monorail Route – Sec. 1.17
- C. Compatibility & Connectivity – Sec. 3.5
- D. Fixed Guideway Technology Standards – Sec. 7.1
- E. Performance Standards – Sec. 7.1
- F. Minimum Insurance – Sec. 19.1, 19.2
- G. Disclosure of Principals – Sec. 28



## EXHIBIT A

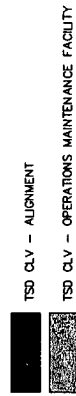
# **DOWNTOWN MONORAIL DISTRICT IN THE CITY OF LAS VEGAS**

**LAS VEGAS, NEVADA**  
**01/08/02**

## LEGEND

TSD CLV - PROPOSED DISTRICT



**LEGEND****EXHIBIT B****MONORAIL ROUTE IN THE CITY OF LAS VEGAS**

LAS VEGAS, NEVADA  
01/08/02



## EXHIBIT C

### Compatibility & Connectivity Standards

NRS 705.695 authorizes the City of Las Vegas to grant a franchise to a private entity to install and operate a monorail system. Pursuant to NRS 705.700(3), any monorail franchise must include provisions addressing the connectivity and compatibility of the proposed monorail system with a public fixed guideway and other private transportation systems. The following issues must be addressed in dealing with connectivity and compatibility with other fixed guideway systems that might be developed and other transportation systems, such as the RTC's CAT Bus System:

#### 1. Physical Interfaces

- a. Location of Potential Joint Stations
- b. System Design and Construction
  - i. Joint Station Design: (i) system interface (such as vehicles, automatic train control, communications, etc.); (ii) mezzanine access; (iii) ground level access; (iv) public amenities; (v) type of station interface (e.g. parallel or stacked); (vi) aesthetic design; and (vii) other issues that could impact upon the parties' use and operation of a Joint Station.
  - ii. Other Physical Interfaces
- c. Physical Interface Agreement: (a) station ownership and related property rights; (b) sharing of property acquisition and station construction costs; (c) station security; and (d) power/systems integration issues.
- d. Owner's Monorail/RTC CAT Bus System Interface

#### 2. Operations and Maintenance

- a. Owner's Monorail/Other Fixed Guideway System Interface
  - i. Overall Operations, including fare collection technology, fare collections and allocations, and operations safety requirements.
  - ii. Overall Maintenance, including scheduling and responsibilities of multiple maintenance facilities.
  - iii. Operations and Maintenance Agreement: (a) schedule integration and service coordination; (b) hours of operation; (c) peak and off-peak operation times; (d) allocation of responsibilities and costs for security and law enforcement, including fare evasion and the authority to issue

citations; (e) fare collection, integration and transfer policies; and (f) allocation of responsibilities and costs for maintenance of shared infrastructure, including but not limited to, cleaning cycles, graffiti cleaning and trash pickup.

b. Owner's Monorail/RTC CAT Bus System Interface

- i. Overall Operations: (i) coordination of service; (ii) routing of passengers transferring between buses and the Owner's Monorail; and (iii) fare collection technology being used by the RTC CAT Bus System and the potential for coordination and fare transfers with the Owner's Monorail.
- ii. Operations and Maintenance Agreement: (a) security and law enforcement, including fare evasion and the authority to issue citations; (b) fare collection, integration and transfer policies; (c) maintenance of shared infrastructure, including but not limited to, cleaning cycles, graffiti cleaning and trash pickup; and (d) schedules.

3. Liability and Indemnification

a. Owner's Monorail/Other Fixed Guideway System Interface at Joint Stations

- i. Insurance
- ii. Liability and Indemnity Agreement: (a) specific allocations of liability for personal injury; (b) specific allocations of liability for property damage; (c) allocation of responsibilities and liabilities for response to seismic events or other major disasters; (d) employee protection and worker's compensation issues; (e) nature and extent of indemnification; (f) insurance coverage requirements; (g) liability issues relating to environmental conditions; and (h) system safety and security.

b. Owner's Monorail/RTC CAT Bus System Interface

- i. Insurance
- ii. Liability and Indemnity Agreement: (a) specific allocations for liability for personal injury; (b) specific allocations of liability for property damage; (c) nature and extent of indemnification; and (d) system safety and security.

4. Other Issues:

- a. price adjustments;
- b. capital asset replacement programs;



- c. transfers of ownership or assignments;
- d. warranties;
- e. defaults and terminations; and
- f. dispute resolution procedures such as partnering, continuance of operations during disputes, mediation, and arbitration.

**EXHIBIT D**Fixed Guideway Technology Standards:

1. Vehicle design capacity – seated & standing passengers @ 2.7 sq. ft. per passenger at AW2 loading.
2. Configuration – 4 to 6-car train
3. Ultimate line capacity – up to 20,000 passengers per hour per direction.
4. Operating mode – fully automated.
5. Air Conditioning – Yes.
6. ADA compliant – Yes.
7. Maximum speed – 45 to 55 mph.
8. Maximum acceleration – 2.2 mph/sec.
9. Maximum deceleration – 2.2 mph/sec.
10. Minimum curve radius – 150 feet.
11. Maximum grade – up to 6.5%
12. Operating headway – 90 seconds to 120 seconds.
13. Must meet all applicable fire, life safety requirements.

## EXHIBIT E

### Performance Standards

The Monorail will be constructed, installed and operated in accordance with the following standards:

Uniform Building Code, as adopted and modified by Clark County, Nevada

A Policy of Geometric Design of Highways & Streets, American Association of State Highway and Transportation Officials

Roadside Design Guide, American Association of State Highway and Transportation Officials

Uniform Standard Drawings for Public Work's Construction Off-Site Improvements, Clark County Area, Volumes I & II, Regional Transportation Commission of Clark County

Uniform Standard Specifications for Public Works' Construction Off-Site Improvements, Clark County Area, Regional Transportation Commission of Clark County

Road Design Division, Design Manual, Nevada Department of Transportation

Standard Plans for Road and Bridge Construction, Nevada Department of Transportation

Standard Specifications for Road and Bridge Construction, Nevada Department of Transportation

Manual on Uniform Traffic Control Devices for Streets and Highways, Federal Highway Administration, U. S. Department of Transportation

Hydrologic Criteria and Drainage Design Manual, Clark County Regional Flood Control District

Uniform Design and Construction Standards for Water Distribution Systems, Las Vegas Valley Water District

Design and Construction Standards for Wastewater Collection Systems, Clark County Sanitation District

Analysis and Design of Guideway Structures, American Concrete Institute

Project construction drawings will be submitted for review and approval in accordance with the established procedures for obtaining City Building Department Building Permits and Encroachment Permits.

Owner recognizes that any existing or proposed improvements within public or private rights-of-way or easements that will be impacted by the proposed Monorail may need to be mitigated or relocated.

Conflicts requiring specific mitigation measures may include any or all of the following, unless otherwise permitted by the City:

- *Monorail Structure in Sidewalk*, Relocate an equivalent sidewalk around a conflict in accordance with ADA Criteria, in an easement if located in private property.
- *Column Footing Located on Underground Utility*, Relocate utility in accordance with specific utility standards to make facility whole.
- *Vertical Clearance above Public Roadways*, Minimum vertical clearance above public rights-of-way will be 18 feet.
- *Work Zone Area Constraints*, Working hours of operations will be agreed to with adjacent property owners, the City and NDOT prior to the start of the project design. Construction traffic control plans must be approved by the City, and NDOT if applicable, per standard procedures.
- *Sight Zone Encroachments*, Columns will be placed, to the extent feasible, such as to limit encroachment into required sight zones for any public or private street or driveway. Sight distances shall meet minimum standards or unsafe conditions will be mitigated.
- *Traffic Signal Head Visibility*, Column and guideway elements of the Monorail will be positioned such as to not obscure traffic signal heads from motorists as required by the Manual of Uniform Traffic Control Devices (MUTCD).
- *Street Lighting*, Column and guideway elements of the Monorail will be positioned such as to not result in unacceptable street lighting patterns on public streets or acceptable alternative lighting systems will be provided.
- *Lane Width or Location Adjustments Due to Column Placement*, Traffic Impact Analysis and Mitigation Study will be used to determine impacts and mitigation of column placement within the affected roadways and intersections included in the Study.
- *Future Improvement Projects*, Owner will coordinate with the City staff on City public works projects under design concurrently with the Monorail.
- *Column Protection*, Assess and provide column protection of columns located within public rights-of-way.
- *City Drainage Facilities*, Determine and mitigate impacts on the City drainage facilities.
- *Approved Development*, Owner will work with the City to ensure adequate access is provided to approved developments not yet constructed.

The codes, specifications, and standards of the following organizations shall be used for engineering and design standards not covered by the above:

American Institute of Steel Construction  
 Association of Iron and Steel Engineers  
 American Iron and Steel Institute  
 American Institute of Timber Construction  
 American National Standards Institute

American Railway Engineering Association  
American Society of Civil Engineers  
American Society of Testing Materials  
American Welding Society  
Comite Euro-International du Beton/Federation Internationale de las Precontrainte  
Concrete and Masonry Industry Fire Safety Committee  
Concrete Reinforcing Steel Institute  
National Concrete Masonry Association  
National Fire Protection Association  
Occupational Safety & Health Act  
Precast/Prestressed Concrete Institute  
Steel Joist Institute  
Underwriters Laboratories, Inc.

**EXHIBIT F**

**MINIMUM INSURANCE REQUIREMENTS  
CONSTRUCTION & OPERATION PHASES**

**I. CONSTRUCTION PHASE**

| <b>TYPES OF INSURANCE</b>                             | <b>LIMIT</b>                   | <b>DESCRIPTION OF COVERAGE</b>                                                                                                                                                                      |
|-------------------------------------------------------|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. Commercial General Liability                       | \$200 million                  | Bodily injury and property damage to third parties resulting from construction activities.                                                                                                          |
| B. Builders' Risk                                     | \$25 million                   | Damage to physical features of the construction work from all risks, i.e., earthquake, flood, fire, wind, etc.                                                                                      |
| C. Cargo                                              | Replacement value of equipment | Damage to monorail vehicles, equipment and systems in transit through installation, testing, commissioning, and transfer of title.                                                                  |
| D. Professional Liability and Environmental Liability | \$25 million                   | Damage caused by engineers' negligence in the design of the work and supervision of construction or installation, and damage from release or discharge of environmental contaminants or pollutants. |
| E. Automotive Liability                               | \$200 million                  | Bodily injury and property damage caused by contractors' vehicles.                                                                                                                                  |
| F. Workers' Compensation                              | Statutory                      | Employee injuries that are covered by Nevada State Workers' Compensation law.                                                                                                                       |
| G. Employers' Liability                               | \$200 million                  | Employee injuries that are not covered by state Workers' Compensation laws.                                                                                                                         |

## MINIMUM INSURANCE REQUIREMENTS CONSTRUCTION & OPERATION PHASES

### II. OPERATION PHASE

| TYPES OF INSURANCE                                    | LIMIT                                                     | DESCRIPTION OF COVERAGE                                                                                                                 |
|-------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| A. Commercial General Liability                       | \$200 million                                             | Bodily injury and property damage to third parties resulting from operation of the monorail system                                      |
| B. Direct Property                                    | Replacement value                                         | Damage to physical features of the project infrastructure and equipment from all risks, i.e., earthquake, flood, fire, wind, etc.       |
| C. Boiler & Machinery                                 | Replacement value<br>(included with Direct Property Ins.) | Damage to machinery and equipment, i.e., electrical motors, panels, power distribution systems, etc.                                    |
| D. Professional Liability and Environmental Liability | PL - \$25 million<br>EL - \$10 million                    | Policy provided during construction phase remains in effect for a period of 8 years after commencement of construction.                 |
| E. Automotive Liability                               | \$100 million                                             | Bodily injury and property damage caused by contractors' vehicle.                                                                       |
| F. Workers' Compensation                              | Statutory                                                 | Employee injuries that are covered by Nevada State Workers' Compensation law.                                                           |
| G. Employers' Liability                               | \$100 million                                             | Employee injuries that are not covered by State Workers' Compensation law                                                               |
| H. Comprehensive Crime                                | \$3 million                                               | Dishonesty, disappearance, destruction, theft, and robbery on and off premises.                                                         |
| I. Business Interruption                              | 18 months of gross revenues                               | Lost revenues and extra expense due to business interruptions caused by insured perils, i.e., weather-related damage, acts of God, etc. |

# EXHIBIT G

## CERTIFICATE

### DISCLOSURE OF OWNERSHIP/PRINCIPALS

#### 1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

#### 2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

#### 3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

#### 4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

| Block 1     | Contracting Entity                                            |
|-------------|---------------------------------------------------------------|
| Name        | Transit Systems Development                                   |
| Address     | 3800 Howard Hughes Pkwy.,<br>Suite 920<br>Las Vegas, NV 89109 |
| Telephone   | (702) 731-4055                                                |
| EIN or DUNS | 88-0506715                                                    |

| Block 2                               | Description |
|---------------------------------------|-------------|
| Subject Matter of Contract/Agreement: |             |
| Monorail Agreement                    |             |
| RFP #:                                |             |

| Block 3    | Type of Business                                                                      |
|------------|---------------------------------------------------------------------------------------|
| Individual | Partnership <input checked="" type="checkbox"/> Limited Liability Company Corporation |



# CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

**Block 4 Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

|     | FULL NAME/TITLE     | BUSINESS ADDRESS                                      | BUSINESS PHONE |
|-----|---------------------|-------------------------------------------------------|----------------|
| 1.  | Robert N. Broadbent | 3800 Howard Hughes Pkwy., #920<br>Las Vegas, NV 89109 | 731-4055       |
| 2.  | Cam C. Walker       | 3800 Howard Hughes Pkwy., #920<br>Las Vegas, NV 89109 | 731-4055       |
| 3.  |                     |                                                       |                |
| 4.  |                     |                                                       |                |
| 5.  |                     |                                                       |                |
| 6.  |                     |                                                       |                |
| 7.  |                     |                                                       |                |
| 8.  |                     |                                                       |                |
| 9.  |                     |                                                       |                |
| 10. |                     |                                                       |                |

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: \_\_\_\_\_

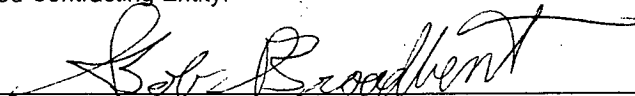
**Block 5 Disclosure of Ownership and Principals - Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

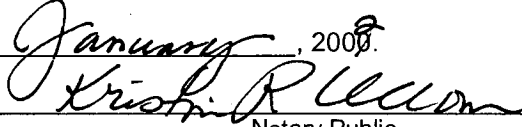
Name of Attached Document: \_\_\_\_\_

Date of Attached Document: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

  
 Name  
 Jan 24, 2002  
 Date

Subscribed and sworn to before me this 24 day of

January, 2002.  
  
 Notary Public

