

## RTD Notice of Concessionaire Termination Event

**From:** Joseph Christie  
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Regional Transportation District

**To:** John Thompson  
Project Director  
Denver Transit Partners

**Date:** October 9, 2018

Pursuant to Section 41.2(a)(i) of the Concession Agreement (CA), RTD hereby provides the Concessionaire, Denver Transit Partners, with this notice of default to cure a Concessionaire Termination Event that has occurred pursuant to 41.1(a). The applicable Concessionaire Termination Event warranting this notice is that “the Revenue Service Commencement Certificate in respect of any Commuter Rail Service is not, or there is no reasonable prospect of it being, issued on or before the Revenue Service Deadline Date . . .” CA § 41.1(a)(ii). The Revenue Service Deadline Date for all Commuter Rail Service, including the Gold Line, was June 2, 2018. That date has now passed, and the Revenue Service Commencement Certificate for the Gold Line has not yet been issued. Accordingly, a Concessionaire Termination Event pursuant to CA § 41.1(a)(ii) has occurred.

In addition, pursuant to David Genova’s letter dated September 5, 2018 [transmitted via RTD-TRN-035071], RTD has already placed DTP on notice of deficiencies that, if ongoing and unremedied, constitute Concessionaire Termination Events. RTD continues to reserve its rights to pursue any and all relief available to it under the CA and applicable law for these default events.

RTD hereby reminds DTP of its ongoing responsibility under the terms of the Concession Agreement to remain in full compliance with its contractual obligations during the course of any dispute, including the litigation DTP has commenced. Any failure by DTP to meet the contractual requirements during the litigation will constitute additional breaches by DTP under the Concession Agreement.

RTD is disturbed by DTP’s continued inability to address federal safety compliance concerns. For example, as Mr. Genova stated in his September 5, 2018 letter, DTP was aware of the interlocking test issue for two years yet failed to complete these federally required tests. This performance is unacceptable to RTD. These are not just the safety concerns of FRA; they are also the safety concerns of RTD.

RTD is disappointed that it had no choice other than to accept a system dependent on FRA 5-year waivers utilizing a non-vital PTC system, which currently remains reliant upon crossing attendants and are operating without quiet zones in residential areas. DTP has not met its obligations to deliver a system with FRA-approved constant warning time. Having been well aware of these deficiencies, DTP’s customary response has been one of blame and complaint. *See* Aconex Transmission DTP-OFLTR-000694. RTD’s September 5, 2018 letter was factually accurate and disputes DTP’s assertion that it was not. The facts in that letter were verified by communications directly from the FRA, the responsible safety regulator.

RTD rightfully expects DTP, as an experienced and accomplished concessionaire partner, to be (i) transparent and forthcoming about the issues it faces; (ii) responsive to safety compliance issues with appropriate urgency; (iii) keenly aware of how its own conduct affects the owner of the system; and (iv) solution-oriented. DTP, including its affiliates Fluor and Balfour Beatty, have not met any of these expectations. DTP's lack of responsiveness to safety issues raised by regulators and failure to deliver these critical system elements have resulted in irreparable harm to RTD and the viability of the Eagle Project.

It is with great disappointment that RTD submits this notice of default in accordance with Section 41.2(a)(i) of the Concession Agreement. Pursuant to the terms of the Concession Agreement governing a continuing Concessionaire default, RTD respectfully requests that DTP either remedy the breaches within 30 days (per CA § 41.2(a)(i)(A) or within 20 days propose a remedial plan to cure the breaches (per CA § 41.2(a)(i)(B). Such a plan shall specify in reasonable detail the manner in which DTP proposes to remedy the breach and the latest date by which it is proposed that such breach or all such breaches shall be remedied. CA § 41.2(a)(i)(B). RTD acknowledges that the Concession Agreement provides that RTD may not exercise its right to terminate during the above-described cure period.

The Concession Agreement remains in full force and effect. Accordingly, RTD expects DTP to work diligently, and in respectful partnership with RTD, to expediently prepare for commencement of revenue service on the G-Line and to continue revenue service on the A- and B-Lines in accordance with its obligations in the Concession Agreement. Furthermore, RTD will respect any final decision by the court under the pending litigation that expressly excuses a particular DTP default.

As a partner to DTP, RTD remains hopeful that DTP will deliver on its promises and hold itself accountable to RTD and the public it serves.