The purpose of this memo is to recap the discussion that took place on October 19, 2011 between RTD and BNSF Railway representatives regarding the outcome of the Planning Support Agreement entered into between the parties for developing Estimated Compensation for Easements for three potential commuter rail operating scenarios. BNSF informed RTD that it was possible to develop estimated compensation amounts for the first two scenarios as outlined in the Agreement, and RTD may pursue a variation of the third operating scenario.

BNSF developed preliminary design documents to about the 30% design level that allowed evaluation of the capital improvements that would be required to convey easements to RTD and to ascertain the impacts to BNSF operations. Ultimately, BNSF ascertained that a double track system to Longmont with other improvements was sufficient to allow RTD to operate the following two scenarios, while maintaining current and future freight operations within the corridor:

1. **Scenario One**: Nine one way trips between Denver and Longmont in the morning between the hours of 6:00 a.m. and 9:00 a.m. and nine one way trips between Denver and Longmont in the evening between the hours of 3:30 p.m. to 6:30 p.m. at approximately twenty minute intervals for a total of 18 one way trips per day. No weekend service.

2. **Scenario Two**: Between Denver and Longmont approximately 55 one-way trips per weekday with schedules of not more than half hourly from approximately 6:00am to 9:00am and 3:30pm to 6:30pm with hourly service during the remainder of operating hours, and hours of operation between 4:00am to midnight each weekday, with no service between midnight and 4:00am. Between Denver and Longmont approximately 36 one-way trips each weekend day with service no more than hourly and hours of operation between 4:00am and midnight and no service between midnight and 4:00am.

RTD had sought pricing on a third scenario that would allow 15 minute peak period, 30 minute off peak period service in each direction on weekdays. BNSF determined that a double track system between Denver and Longmont would not allow BNSF and RTD adequate capacity for BNSF freight service needs and RTD’s requested passenger easements at that level. RTD has asked BNSF to review whether the double track system would allow weekday peak period frequencies for RTD passenger service at 15 minutes each direction between Denver and Longmont with the remainder of RTD’s service following Scenario Two. BNSF has agreed to consider this scenario and will respond to RTD.

**Easement Cost:**

Easement costs were estimated in 2011 dollars. Easements would be permanent and would be contracted through a Purchase and Sale Agreement (PSA). Although not specifically discussed RTD anticipates receiving an Easement Deed for its interest which would be recorded. RTD acknowledged that it has powers of eminent domain and any easement acquisition would be in lieu of its attempt to assert its rights.
BNSF has provided RTD with an estimated cost for the purchase of the easement required for Scenario One at $410 million. BNSF provided RTD with an estimated cost for the purchase of the easement required for Scenario Two at $535 million.

Costs are estimated only and subject to revisions based on an effort to reduce impacts to wetlands and surrounding property, coordinate with RTD station design, address safety concerns at grade crossing raised by the Colorado Department of Transportation and local governments, and to address other environmentally sensitive areas. Technical issues are significant and the parties understand that any solution to these issues may affect cost increases or decreases. In addition, the cost estimate includes only a conceptual signal and telecom number. Signal costs between Denver and MP 47, a few miles north of RTD’s final station will be included in final easement costs.

**Operating and Maintenance Cost**

A formula for Operating and Maintenance (O&M) costs was utilized and an estimate has been provided to RTD for both scenarios. Operating costs will be calculated annually from actual costs and will be apportioned on actual usage of track between the parties. RTD will be required to contribute to O&M for track and structures based on gross ton miles. RTD will be required to contribute to dispatch and signal costs based on train miles. No train crewing will be included in O&M costs. Dispatching, a BNSF railroad superintendent, and services of BNSF passenger operations desk are included in the total O&M cost. Capital replacement is not included at this time, but will be calculated based on O&M procedures. BNSF estimates that for Scenario One RTD would have approximately 20% of the gross ton miles, 55% of the train miles and annual O&M costs in 2011 dollars of approximately $4.4 million. Scenario Two would generate approximately 49% of the gross ton miles, 82% of the train miles used on the corridor giving an operating cost of approximately $7 million in 2011 dollars. RTD indicated that given its level of financial contribution to O&M, decisions on O&M requirements should be made jointly subject to objective controls such as track classification standards and meeting all FRA requirements, along with dispute resolution provisions such as referral to an independent engineer.

**Cost Escalation**

As noted above, all cost estimates were in 2011 dollars. RTD does not anticipate the ability to contract for any of these easements without a successful election for a sales tax increase in 2012. The parties will attempt to develop a Memorandum of Understanding in the first quarter of 2012 expressing their agreement on cost development, costs, refined engineering assumptions and operating and maintenance obligations. Costs identified in the MOU will be utilized to developing amounts needed in a sales tax election anticipated in November, 2012. RTD would not be able to enter into a Purchase and Sale Agreement until 2013 if there were a successful election.

Costs would be escalated from 2011 until the time of the construction of improvements that are required by RTD to use the easement. BNSF proposed using escalation factors for the easement prices based on a formula of one-third the American Metal Market Chicago Heavy Metals Scrap Index as a proxy for change in materials cost, one-third its percentage change in
labor costs based on rates in its exiting labor agreements, and one-third a general indicator which may be that used by RTD for its internal forecasting, the Consumer Price Index, the Producer Price Index or a hybrid of some of those. Prior to entering into contract the mechanism for fixing the measuring tools, sources of reference, dates on which changes would apply, how RTD would obtain information about BNSF labor rates, and fixing the factors for the general one-third measurement. RTD asked that any decreases apply as well as any increases. BNSF has indicated this was not an unreasonable request.

The parties agreed that payments made before construction of joint use improvements would not be escalated but it may not be feasible to make significant payments in advance of improvements and use.

Next Steps

Next steps will occur on two tracks. Engineering assumptions and technical difficulties will have to be refined and an MOU will have to be developed. Engineering work will start immediately. The MOU will likely be developed in 2012.