

## **EXHIBIT B**

### **AERIAL EASEMENT AGREEMENT** **(NORTH METRO RAIL LINE)**

THIS **AERIAL EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF COMMERCE CITY** ("Grantor"), a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution, with a mailing address of 7887 East 60<sup>th</sup> Avenue, Commerce City, Colorado 80031, and the **REGIONAL TRANSPORTATION DISTRICT** ("Grantee"), a political subdivision of the State of Colorado with a mailing address of 1600 Blake Street, Denver, CO 80202-1399 (individually a "Party" and collectively, the "Parties").

Subject to and in accordance with the terms, covenants and conditions contained in this Agreement, and in consideration of the mutual agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. **CITY RIGHT OF WAY.** The City has fee or easement interests in land now in use as right-of-way for 64<sup>th</sup> Avenue as public highways (the "City ROW").

II. **GRANT.** Grantor hereby grants to Grantee, an aerial easement including surface and subsurface support and access, ingress and egress to construct, reconstruct, maintain, repair, replace and use an elevated structure for passenger rail including without limitation support columns, structures and systems, and utilities necessary for the powering of and communicating with such systems (collectively, the "Overpass") over and across the City ROW at a height not lower than sixteen feet six inches (16'6") above, over, within and upon certain real property located in the City of Commerce City, Unincorporated Adams County, State of Colorado, as such real property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("Easement Property").

III. **RESERVED RIGHTS.** Grantor retains the right to use and occupy the Easement Property insofar as such use and occupancy is consistent with and does not impair the Grantee's use of the Easement Property.

A. **Existing Improvements.** Grantor covenants and agrees that no building, structure, wall, fence, tree, irrigation system, utility installation or other above or below ground obstruction that may interfere with the purposes for which this easement is granted is now or may be placed, erected, installed or permitted on the Easement Property; provided, however, that Grantee hereby acknowledges and accepts any other improvements, that exist on, under or over the Easement Property as of the date of this Easement Agreement and any future replacements thereof (collectively, the "Existing Improvements"). Grantor hereby reserves the right, to maintain, repair and replace all such Existing Improvements at any time. Grantee shall use commercially reasonable efforts to avoid causing any damage or harm to any of the Existing Improvements.

B. **Correction.** Grantor agrees that, in the event of a violation of its covenant not to obstruct under *subsection (A)* above, such violation shall immediately be corrected

by Grantor upon receipt of written notice from Grantee, or, Grantee may itself elect to correct or eliminate such violation at Grantor's expense, in which case Grantor shall promptly reimburse Grantee for any costs or expenses incurred by Grantee in enforcing such covenant.

IV. **MAINTENANCE.** Grantor covenants and agrees to maintain and keep the City ROW and the Existing Improvements, including without limitation snow and ice removal, at Grantor's sole cost and expense, in a good condition and state of repair except that Grantee shall repair, at Grantee's sole cost and expense, any damage to the City ROW or Existing Improvements caused by Grantee.

V. **SUCCESSORS AND ASSIGNS.** Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties and all covenants shall apply to and run with the land unless otherwise specifically noted.

VI. **ENTIRE AGREEMENT, AMENDMENT.** This Agreement represents the entire agreement between the Parties regarding the Easement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the Parties.

VII. **APPLICABLE LAW.** This Agreement shall be interpreted and enforced according to the laws of the State of Colorado. In the event of any dispute over the terms and conditions of this Agreement, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the Adams County District Court of Colorado.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

GRANTOR:

**CITY OF COMMERCE CITY**

By: \_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Laura J. Bauer, CMC, City Clerk

By: \_\_\_\_\_  
Robert Gehler, City Attorney

STATE OF COLORADO )  
CITY OF COMMERCE CITY ) ss  
COUNTY OF ADAMS )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_, by \_\_\_\_\_ as \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

GRANTEE:

REGIONAL TRANSPORTATION DISTRICT, a  
Colorado political subdivision

By: \_\_\_\_\_  
David Genova  
Interim General Manager

STATE OF COLORADO )  
 ) s s.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_, by \_\_\_\_\_ as \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

Approved as to Legal Form:

By: \_\_\_\_\_  
Lori L. Graham  
Associate General Counsel