

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made _____, 20____ (the "Effective Date") by and between the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose address is 1660 Blake Street, Denver, Colorado 80202 ("Licensor" or "RTD"), and the CITY OF COMMERCE CITY, Colorado, a Colorado home rule municipality, whose address is 7887 East 60th Avenue, Commerce City, CO 80022 ("Licensee" or the "City").

- A. RTD will operate the North Metro Rail Line (the "NMRL") for mass transit purposes.
- B. RTD and the City have entered into that certain Intergovernmental Agreement dated March 27, 2020, as amended from time to time, regarding artwork for the North Metro Rail Line (collectively, the "Art IGA").
- C. Pursuant to the Art IGA, the City will acquire, install, and maintain certain Art Pieces, as such term is defined in the Art IGA (collectively referenced herein as the "Facilities") in the City in the vicinity of those RTD stations located in the City's jurisdiction.
- D. The City desires and RTD desires to provide the City with a license to enter upon certain Premises (as defined below) within RTD's railroad right-of-way ("RTD Property") in order for the City to install and maintain the Facilities.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. LICENSE

- A. The Facilities will be installed in the approximate orientations and locations shown on Exhibit 1, attached and incorporated herein, as such locations may be modified pursuant to the Art IGA. The City will be permitted to use a reasonable working area around the Art Pieces for the purposes described herein, which working area is also designated on Exhibit 1. The designated working area, together with the Facilities' locations are referred to individually and collectively herein as the "Premises".
- B. Subject to all the terms and conditions hereof, Licensor hereby grants to Licensee a non-exclusive, revocable license and permission to enter upon and have ingress to and egress from the Premises (the "License") solely for the purpose of installing and maintaining the Facilities.
- C. Licensor shall retain all rights in and usage of the RTD Property and the Premises. The License is subject to existing interests, easements, leases, licenses and permits (if any) heretofore granted, reserved or held by Licensor, its predecessors in interest, or any other person or entity affecting any of the Premises. Licensee's use of the Premises shall not interfere with Licensor's use and/or maintenance of the RTD Property or its rail lines, nor with the needs and requirements of Licensor's tenants, easement beneficiaries, licensees, or lien holders, nor with the use of their improvements on the RTD Property.
- D. Licensee shall contractually require its employees, agents, contractors and subcontractors performing activities hereunder to comply with each of the terms and conditions of this Agreement and to acknowledge all rights reserved to Licensor hereunder.

ARTICLE 2. TERM OF LICENSE AGREEMENT

This Agreement shall become effective upon the Effective Date and shall remain in effect until terminated by either party pursuant to the Art IGA or Article 3 below.

ARTICLE 3. TERMINATION

- A. Licensor may terminate this Agreement as to all Facilities covered hereunder or with respect to certain Facilities or portions of the Premises. Notice of termination shall be provided by Licensor to Licensee in writing 180 days prior to the effective date of termination and shall specify the scope and extent of such termination. Prior to the effective date of termination specified, Licensee shall, at its cost, remove its terminated Facilities and reasonably restore the RTD Property and the Premises on which the terminated Facilities were installed to the condition in which the Premises existed as of the execution date of this Agreement. Licensee shall provide notice in writing to Licensor that it intends to remove the Facilities 60 days prior to the anticipated date of removal, and this Agreement shall terminate upon Licensor's inspection and acceptance of such removal and restoration of the RTD Property. If the Facilities are removed from the RTD Property without notice to Licensor, this Agreement shall automatically terminate. Licensee's obligation to restore the RTD Property and the Premises shall survive termination of this Agreement.
- B. Licensee agrees that in the event of a violation by Licensee of the terms of this Agreement, such violation shall be corrected by Licensee immediately upon receipt of written notice from Licensor ("Default Notice"). If the violation is not cured to the satisfaction of Licensor within 30 days after receipt of the Default Notice, or such longer period as the Licensor may permit in writing, Licensor may, without prejudice to Licensor's right to terminate this Agreement, elect to correct or eliminate the violation at Licensee's expense. If Licensee fails to timely reimburse Licensor, Licensor may terminate the Agreement effective immediately, and Licensee shall immediately cease operating the Facilities and promptly remove its Facilities and restore the RTD Property at Licensee's cost. If Licensee fails to remove the Facilities and restore the RTD Property within 90 days of termination, Licensor may remove the Facilities and/or restore the RTD Property at Licensee's cost.
- C. Reimbursement to Licensor under any provision of this Article 3 shall be due and payable 30 days after Licensee's receipt of a written invoice and supporting documentation.
- D. As indicated herein, certain provisions of this Agreement shall survive termination of this Agreement.

ARTICLE 4. CONSTRUCTION

- A. Licensee shall install the Facilities in accordance with Exhibit 1.
- B. Licensee will ensure that each of its contractors requiring access to and entry upon the RTD Property for the purposes of performing work under this Agreement will submit to RTD a fully executed Contractor Right of Entry Agreement substantially in the form attached and incorporated herein as Exhibit 2 ("Contractor ROE"). The fully executed Contractor ROE and all supporting documentation required therein must be submitted to RTD prior to entry upon the RTD Property by any Licensee contractor and in every event not less than 14 days in advance of such entry.
- C. All work shall be coordinated by Contractor with the North Metro Construction Project Manager by email at NM-Construction@rtd-denver.com or phone (303) 299-6979, the RTD Senior Manager, Commuter Rail, at office number (303) 299-2897 or michael.millage@rtd-denver.com, and RTD's Utility Engineering/Construction Team by email at UtilityDesignConstruction@rtd-denver.com or phone at (303) 299-2811. Licensee's Contractor shall notify RTD a full two (2) weeks prior to construction and shall coordinate a pre-construction meeting with RTD. Licensee shall obtain an Access Permit (defined below) if required by Licensor in accordance with Article 5 (*Maintenance and Emergency Access*).

Licensor reserves the right to have RTD personnel present during construction, maintenance, modification, adjustment, relocation or removal of the Facilities. Upon completion of construction of the Facilities, Licensee shall promptly remove all tools, equipment and materials from the Premises and restore the Premises and RTD Property, including re-vegetation, to substantially the same state and condition as when entered upon.

ARTICLE 5. MAINTENANCE AND EMERGENCY ACCESS

- A. Licensee shall ensure that the Facilities are operated and maintained, at Licensee's expense, in good repair and in full compliance with federal, state, and local laws and applicable industry and RTD standards until this Agreement is terminated.
- B. Licensee shall obtain an approved right of way access permit ("Access Permit") from RTD at <http://www.rtd-denver.com/UtilityConstruction.shtml> whenever Licensee or its construction equipment will be present inside a restricted, fenced area or within 25 feet of either the nearest rail of the RTD rail tracks or the overhead contact system ("OCS"). Licensee must initiate a request for an Access Permit no fewer than 21 business days prior to the date of the proposed access. Licensee's employees and contractors shall be required to attend an Access Permit coordination meeting at a time and date to be established by RTD. Licensee's employees and its contractors seeking access under the Access Permit shall complete applicable safety training, which RTD shall provide at the Licensee's cost, or provide proof of current training, prior to the RTD coordination meeting.
- C. If an Access Permit is granted, RTD shall provide any flagger necessary to protect RTD rail service, patrons and employees at Licensee's cost to protect and expedite train movement whenever the Access Permit requires it.
- D. Whenever an Access Permit is active, Licensee shall ensure that the following requirements are met:
 - 1. A copy of the signed Access Permit must accompany Licensee's employees and/or contractors on the RTD Property.
 - 2. Licensee's employees and contractors must keep proof of RTD safety training completion readily available while working on the RTD Property.
 - 3. Licensee's employees and contractors must have RTD safety trained and qualified look-outs on the RTD Property for Licensee's work.
 - 4. Licensee's employees and/or contractors must wear orange MUTCD 2009 Class II compliant high visibility safety vests at all times while working on the RTD Property.
 - 5. Licensee's employees and contractors must notify RTD dispatch control at (303) 299-3480 prior to entering, and when clear of, the RTD Property.
 - 6. Licensee's employees and contractors must keep all active tracks 100% usable at all hours, unless Licensee has received prior written consent from RTD, and must clear rail flangeways and work areas of debris prior to leaving the RTD Property.
- E. The OCS is live and hot at all times. Pursuant to RTD's sole discretion, RTD may de-energize the OCS at the Licensee's cost upon a showing by Licensee that de-energization is necessary to accomplish its work related to the Facilities. Licensee shall remit the de-energization fee to Licensor prior to de-energization. Licensee understands and acknowledges that the mainline OCS cannot be de-energized during revenue service hours and any such de-energization requires two weeks' advance written notice to RTD, except in the case of an emergency.
- F. RTD may refuse to grant any Access Permit on either safety or operational grounds or may

grant any Access Permit subject to special condition(s) imposed by RTD. Special operating conditions set forth in a granted Access Permit shall be deemed to be incorporated in this Agreement by this reference.

- G. **In case of emergency** caused by failure of the Facilities within the RTD Property, Licensee shall immediately notify RTD rail dispatch of such emergency at (303) 299-2911 or such other number provided by RTD and advise of Licensee's proposed actions to immediately address such emergency. Licensee shall, if reasonably practicable, avoid remedial operations that would delay or obstruct RTD rail operations. If Licensee cannot avoid remedial operations, Licensee shall, if reasonably practicable, avoid any delay or obstruction to RTD rail operations during RTD peak hours of 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. of any weekday. Otherwise, Licensee shall expeditiously take such actions as will safely address the emergency and permit RTD's resumption of safe and timely rail service. Costs incurred by RTD in connection with any failure of the Facilities or Licensee's actions in relation to such failure shall be paid by the Licensee in accordance with the process set forth in Article 3.C.

ARTICLE 6. RELOCATION

Licensee shall relocate all or any portion of its Facilities within such timeframe as RTD may designate whenever RTD shall find such action necessary or desirable, provided that Licensee shall have the option of removing a Facility from RTD Property in lieu of any relocation of such Facility required by RTD. Licensee shall bear the entire cost and expense incurred in connection with any such relocation or removal of the Facilities, including any and all expenses which may be incurred by Licensor in connection therewith for supervision, inspection, impacts to Licensor's facilities or operations or otherwise. If Facilities are so relocated within the RTD Property, all of the terms, conditions and stipulations herein expressed with reference to the Facilities shall, so long as any Facilities remain within the RTD Property, apply to the Facilities as relocated, and this Agreement shall terminate with respect to all or such part of the Premises that no longer contains the Facilities. The provisions of Article 4 shall also apply to the relocation of the Facilities.

ARTICLE 7. NO DIGGING AND BORING

No digging or boring activities is permitted on the Premises or the RTD Property without RTD's prior written approval.

ARTICLE 8. NOTICES

Unless otherwise prescribed in this Agreement, any notices required to be given shall be provided in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

If to Licensor:	Regional Transportation District Attn: Manager of Real Property 1560 Broadway, Suite 650 Denver, Colorado 80202 Phone: (303) 299-6904
With a copy to:	Regional Transportation District Attn: Senior Manager, Commuter Rail 711 W 31st Ave, Denver, CO 80202 Phone: (303) 299-2897 In emergency: 303-299-2911

With a copy to: General Counsel
Regional Transportation District
1660 Blake Street
Denver, CO 80202
Phone: (303) 299-2207

If to Licensee:
City of Commerce City
Community Relations Manager
7887 East 60th Avenue
Commerce City, CO 80022

With a copy to:
City Attorney
City of Commerce City
7887 E. 60th Avenue
Commerce City, Colorado 80022

The address or telephone number to which any notice, demand, or other writing may be provided may be changed by written notice to the above addressees.

ARTICLE 9. LIABILITY

- A. Licensee shall be responsible for any damage to any property, including the Premises, the RTD Property or other RTD property, Licensee's property, adjacent property, utilities, adjacent structures, and other third-party real and personal property that is caused by the Facilities or Licensee's or its contractors' activities, and Licensee shall either promptly repair such damage or pay damages to the reasonable satisfaction of the owner of the damaged property, in either case at no cost to Licensors. Licensors and Licensee shall notify one another of any such damage and any potential claims arising out of such damage.
- B. Licensee shall contractually require its contractors to, indemnify, defend and hold harmless Licensors and its officers, directors, employees, agents and contractors against and from all claims (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs and judgments) arising out of or caused by the Facilities or Licensee's contractors' use of the Premises or the RTD Property hereunder.
- C. The provisions of this Article 9 shall survive the termination, in whole or in part, of this Agreement.

ARTICLE 10. NO WARRANTY

- A. Licensors does not grant nor purport to grant any right not specifically set forth herein. Permission for the Licensee or its contractors to traverse the property of any other property owners or interest-holders other than RTD is the sole responsibility of Licensee as is procurement of any applicable regulatory permission or consent.
- B. The right to use the Premises granted hereunder is hereby contracted for and shall be granted with respect to the Premises in its "AS IS" physical condition without any warranty, express or implied.
- C. Licensee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Licensee or its contractor stores on the Premises or RTD Property,

whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

ARTICLE 11. INSURANCE

- A. Licensee shall procure and maintain, and shall require that its contractors and subcontractors procure and maintain, the following types of insurance, at a minimum, with an insurer or insurers and in a form satisfactory to RTD:
1. Commercial General Liability Insurance with contractual liability endorsement, which shall provide coverage for limits of not less than \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000, and shall also include, but not be limited to, coverage for bodily injury, property damage, and products and completed operations. Following the completion of construction, this insurance will be maintained (renewed annually) for a time period no less than through the period of the applicable Colorado statute(s) of limitation and, if applicable, the Colorado statute of repose. Such policy will name RTD as an additional insured.
 2. Umbrella/Excess Liability Insurance. An umbrella/excess liability policy may be procured to meet the requirements of the Commercial General Liability Insurance limits. Such excess insurance shall be at least as broad as the Contractor's Commercial General Liability, Automobile Liability, and Workers' Compensation and Employers' Liability Insurance. Such policy will name RTD as an additional insured.
 3. Automobile Liability Insurance with a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not be limited to, bodily injury liability and property damage liability, for any vehicles owned, used or hired. Such policy will name RTD as an additional insured.
 4. Workers' Compensation and Employers' Liability Insurance covering all employees of Licensee and its contractors, wherever they may be in the United States of America so long as they are engaged in the work covered by this Agreement. The policy or policies shall cover the entire liability of the Licensee and its contractors as determined by the Workers' Compensation laws of the state or states under which such liability arises, and shall contain, so far as it is lawful to obtain the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Licensee and contractors. Employers' Liability Insurance shall provide coverage for limits of not less than \$500,000.
 5. Prior to entry upon, above or adjacent to the RTD Property, Licensee agrees to furnish RTD with a certificate of insurance for itself and for each of its contractor(s)' policy(ies). Licensee will endeavor to provide 30 days' advance notice of cancellation of its and its contractor(s)' policy(ies) by Registered or Certified mail. Certificates of insurance shall be provided to the RTD Manager of Real Property as provided in Article 8.
 6. Each insurance certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming RTD an additional insured;
 - b) An endorsement evidencing coverage for a liability assumed under an insured contract for liability assumed by the Licensee, its contractor and contractor's subcontractors under this Agreement;
 - c) A Broad Form Property Damage endorsement, if the policy does not provide for the equivalent coverage; and
 - d) Waiver of subrogation in favor of and acceptable to the Licensor.

9. In the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance. For claims covered by the insurance specified herein, said insurance coverage shall be primary and non-contributory insurance with respect to the insured, additional insured parties, and their respective members, directors, officers, employees and agents and shall specify that coverage continues notwithstanding the fact that Licensee, its contractor and its subcontractors have left the RTD Property.
- B. The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- C. Liability of Licensee under this section shall not be limited to coverage provided under said insurance policies.
- D. Only those contractors and subcontractors of Licensee whose operations are covered by insurance will be authorized to work upon or about the Premises or the RTD Property.

ARTICLE 12. HAZARDOUS MATERIALS

Licensee shall not use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any Hazardous Materials at, on, under, in, or about the Licensed Area or RTD Property in violation of applicable law. The term "Hazardous Materials" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any government authority having jurisdiction over the Licensed Area, the State of Colorado, or the United States.

ARTICLE 13. NO SAMPLES/REMOVAL

No removal, manifesting, transport, testing and disposal of any samples or other materials, including Hazardous Materials, is permitted by this Agreement.

ARTICLE 14. GENERAL

- A. Assignment. This Agreement, and any part or interest in this Agreement, may not be assigned by Licensee without the prior written consent of Licensor. No Licensor-approved assignment shall release Licensee from any liability hereunder. Any assignment in violation of this Agreement shall be null and void.
- B. Agreement Binding. This Agreement and all of the covenants, terms and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto, and their respective permitted successors and assigns.
- C. Execution in Counterparts. This Agreement (and each amendment, modification and waiver in respect of this Agreement) may be executed and delivered in counterparts (including by facsimile or email transmission), each of which will be deemed an original, but all of which when taken together shall constitute a single contract and thereafter shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement (including by facsimile or email) shall be effective as delivery of a manually executed counterpart of this Agreement.

- D. Laws to Apply; Jurisdiction and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines govern this Agreement. Jurisdiction and venue for all disputes shall be in the county in which the Premises is located, and Licensee expressly submits itself to the jurisdiction thereof.
- E. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.
- F. No Agency. It is expressly understood and agreed that Licensor and Licensee do not intend to be and shall not in any respect be deemed agents of each other.
- G. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.
- H. Liens. Licensee shall not permit any lien, claim or other charge to be placed on the RTD Property, and Licensee shall promptly cause any such lien, claim or charge to be removed. If any mechanic's lien, claim or other charge is filed against the RTD Property, Licensee shall discharge the same of record by a release or bond within 30 days after the filing of any notice of such lien, claim or other charge. This provision shall survive termination, in whole or in part, of this Agreement.
- I. Waiver; Severability. The failure of either party hereto to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- J. Legal Authority. The Licensee warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Licensee to its terms. The person(s) executing this Agreement on behalf of the Licensee warrant(s) that such person(s) have full authorization to execute this Agreement.
- K. No Dedication; Third Parties. Nothing herein shall be deemed to be a gift or dedication of any portion of the Premises to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of either party shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.
- L. Breach. Any failure of Licensee to fulfill any of Licensee's obligations hereunder shall constitute a breach of this Agreement and subject Licensee to immediate termination of the Agreement, as well as damages and costs, including attorneys' fees.
- M. Applicable Laws; Violation. Licensee shall use the Premises in a safe and careful manner and shall comply with all applicable ordinances and regulations of the jurisdiction in which the Premises is located; federal, state, and local laws; and all other rules of governmental authorities as may be in force and effect during the term of this Agreement. If at any time the use of the Premises by Licensee violates said applicable ordinances or laws, Licensee shall cease and desist from continuing such use and upon demand by RTD.
- N. Additional Licensees. Licensee understands and agrees that during the term of this Agreement, the RTD Property may be used by the public or otherwise, and Licensee shall conduct its work so as not to unreasonably interfere with such other uses.

- O. RTD Equipment. Licensee shall not use RTD equipment, tools or furnishings located in or about the Premises without prior written approval by RTD.
- P. Governmental Immunity. No term or condition of the Agreement or shall be construed or interpreted as a waiver, express or implied, of any immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS § 24-10-101 *et seq.*
- Q. Non-Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the Licensee. Notwithstanding anything in this Agreement that may be construed to the contrary, the Parties agree that the Licensee has made no promise to continue to budget funds beyond the current fiscal year and that the Licensee has and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis. If funds are not appropriated for the Agreement or any obligation thereunder, then the Agreement and any obligation applicable shall terminate, without penalty, as of the end of the last fiscal year for which funds were appropriated, and Licensor shall not be entitled to any penalty, cancellation fee, or additional compensation. All obligations of the Licensee (including any provision providing that some action shall be taken or done at Licensee's cost) shall be subject to this section.

Signature Pages to Follow

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

By: _____
Henry J. Stopplecamp, P.E.
AGM, Capital Programs

Date: _____

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT:

By: _____
Name: Aimée Beckwith
Associate General Counsel
Date: _____

LICENSEE
CITY OF COMMERCE CITY

By: _____
Roger Tinklenberg, Interim City Manager

ATTEST:

By: _____
Dylan A. Gibson, City Clerk

APPROVED AS TO FORM:

By: _____
Sarah L. Geiger, Senior Assistant City Attorney

Exhibit 1 to License Agreement
Location of the Premises
(Pages to Follow)

Exhibit 2 to License Agreement
Contractor Right of Entry
(Pages to Follow)

RIGHT OF ENTRY LICENSE AGREEMENT

This Right of Entry License Agreement ("Agreement") is made _____, 2020 (the "Effective Date"), by and between the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose address is 1660 Blake Street, Denver, Colorado 80202 ("RTD" or "Licensor"), and _____,¹ whose address is _____ ("Licensee").

- E. RTD will operate the North Metro Rail Line (the "NMRL") consisting of commuter rail transit connecting Denver Union Station with Adams County, the City and County of Denver, the City of Northglenn, the City of Thornton, and the City (the "RTD Property").
- F. RTD and the City of Commerce City (the "City"), entered into an Intergovernmental Agreement Regarding Artwork for the North Metro Rail Line dated March 27, 2020, as amended from time to time (the "IGA") for the purpose of installing Art Pieces (as defined in the IGA).
- G. Licensee desires to enter upon a portion of the RTD Property at the NMRL station within the City (the "Licensed Area") for the purposes indicated herein. The Licensed Area is shown on Exhibit A, attached hereto and incorporated herein by this reference.

In consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. THE LICENSE

- A. Licensor hereby grants to the Licensee permission to enter upon the Licensed Area shown on Exhibit A solely for purposes of installing the Art Pieces as described in Exhibit B, attached and incorporated herein.
- B. Licensor shall retain all rights in and usage of the Licensed Area. This Agreement is subject to existing interests, easements, leases, licenses and permits (if any) heretofore granted, reserved or held by Licensor, its predecessors in interest, or any other person or entity affecting any of the Licensed Area, whether of record or not. Licensee's use of the Licensed Area shall not interfere with Licensor's use and/or maintenance of the Licensed Area or its rail lines, nor with the needs and requirements of Licensor's tenants, easement beneficiaries, licensees, or lien holders, nor with the use of their improvements on the Licensed Area.

ARTICLE 2. TERM

This Agreement shall be effective upon the Effective Date. The permission granted herein shall expire 120 days from the Effective Date or upon completion of the installation of the Art Pieces, whichever occurs first.

ARTICLE 3. ACCESS

- A. All work shall be coordinated by Contractor with the North Metro Construction Project Manager by email at NM-Construction@rtd-denver.com or phone (303) 299-6979, the RTD Senior Manager, Commuter Rail, at office number (303) 299-2897 or michael.millage@rtd-denver.com, and RTD's Utility Engineering/Construction Team by email at _____

¹ Insert name of the Contractor and address.

UtilityDesignConstruction@rtd-denver.com or phone at (303) 299-2811. Contractor shall obtain an approved right of way access permit ("Access Permit") from RTD at <http://www.rtd-denver.com/UtilityConstruction.shtml> whenever Contractor or its construction or maintenance equipment will be present inside a restricted, fenced area or within 25 feet of either the nearest rail of the RTD rail tracks or the overhead contact system ("OCS"). Contractor must initiate a request for an Access Permit no fewer than 21 business days prior to the date of the proposed access. Contractor's employees and subcontractors shall be required to attend an Access Permit coordination meeting at a time and date to be established by RTD. Contractor's employees and its subcontractors seeking access under the Access Permit shall complete

applicable safety training, which RTD shall provide at the Contractor's cost, or provide proof of current training, prior to the RTD coordination meeting.

- B. If an Access Permit is granted, RTD shall provide any flagger necessary to protect RTD rail service, patrons and employees at Contractor's cost to protect and expedite train movement whenever the Access Permit requires it.
- C. Whenever an Access Permit is active, Contractor shall ensure that the following requirements are met:
 - 1. A copy of the signed Access Permit must accompany Contractor's employees and/or subcontractors on the RTD Property.
 - 2. Contractor's employees and subcontractors must keep proof of RTD safety training completion readily available while working on the RTD Property.
 - 3. Contractor's employees and subcontractors must have RTD safety-trained and qualified look-outs on the RTD Property for Contractor's work.
 - 4. Contractor's employees and subcontractors must wear orange MUTCD 2009 Class II compliant high visibility safety vests at all times while working on the RTD Property.
 - 5. Contractor's employees and subcontractors must notify RTD dispatch control at (303) 299-3480 prior to entering, and when clear of, the RTD Property.
 - 6. Contractor's employees and subcontractors must keep all active tracks 100% usable at all hours, unless Contractor has received prior written consent from RTD, and must clear rail flangeways and work areas of debris prior to leaving the RTD Property.
- D. The OCS is live and hot at all times. Pursuant to RTD's sole discretion, RTD may de-energize the OCS at the Contractor's cost upon a showing by Contractor that de-energization is necessary to accomplish its work related to the Facilities. Contractor shall remit the de-energization fee to Licensor prior to de-energization. Contractor understands and acknowledges that the mainline OCS cannot be de-energized during revenue service hours and any such de-energization requires two weeks' advance written notice to RTD, except in the case of an emergency.
- E. RTD may refuse to grant any Access Permit on either safety or operational grounds or may grant any Access Permit subject to special condition(s) imposed by RTD. Special operating conditions set forth in a granted Access Permit shall be deemed to be incorporated in this Agreement by this reference.
- F. **In case of emergency** caused by failure of the Facilities within the RTD Property, Contractor shall immediately notify RTD rail dispatch of such emergency at (303) 299-2911 or such other number provided by RTD and advise of Contractor's proposed actions to immediately address such emergency. Contractor shall, if reasonably practicable, avoid remedial operations that would delay or obstruct RTD rail operations. If Contractor cannot avoid remedial operations, Contractor shall, if reasonably practicable, avoid any delay or obstruction to RTD rail operations during RTD peak hours of 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. of any weekday. Otherwise, Contractor shall expeditiously take such actions as will safely address the emergency and permit RTD's resumption of safe and timely rail service. Costs incurred by RTD in connection with the work shall be paid by the Contractor.

ARTICLE 4. LIABILITY

- D. Licensee shall be responsible for any damage to any property, including the Licensed Area, the RTD Property or other RTD property, Licensee's property, adjacent property, utilities, adjacent structures, and other third-party real and personal property that is caused by Licensee's or its contractors' activities, and Licensee shall either promptly repair such damage or pay damages to the reasonable satisfaction of the owner of the damaged property, in either case at no cost to Licensor. Licensor and Licensee shall notify one another of any such damage and any potential claims arising out of such damage.
- E. Licensee shall, and shall contractually require its contractors to, indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents and contractors until expiration or earlier termination of the IGA, against and from all claims (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs and judgments) arising out of or caused by Licensee's and/or its contractors' use of the Licensed Area or the RTD Property hereunder. It is the intention of the parties hereto that the indemnity from Licensee to Licensor provided for in this section indemnifies RTD and its officers, directors, employees, agents and contractors for their own negligence, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage, **provided that** said indemnity shall not protect RTD from liability for death, injury or damage arising solely out of the willful misconduct, gross negligence and/or criminal actions of RTD, its officers, directors, employees, agents or contractors. In the event of any claims made or suits filed, each party shall give the other prompt written notice thereof, and Licensor shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Licensee's obligations hereunder.
- F. Nothing in this Agreement shall be deemed to waive any of RTD's privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.
- G. The provisions of this Article shall survive the termination, in whole or in part, of this Agreement.

ARTICLE 5. NO WARRANTY

- D. Licensor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Licensee or its contractors to traverse the property of any other property owners or interest-holders other than RTD is the sole responsibility of Licensee as is procurement of any applicable regulatory permission or consent.
- E. The right to use the Licensed Area granted hereunder is hereby contracted for and shall be granted with respect to the Licensed Area in its "AS IS" physical condition without any warranty, express or implied.
- F. Licensee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Licensee or its contractor stores on the Licensed Area, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

ARTICLE 6. INSURANCE

- B. Licensee shall procure and maintain, and shall require that its subcontractors procure and maintain, the following types of insurance, at a minimum, with an insurer or insurers and in a form satisfactory to RTD:
 - 1. Commercial General Liability Insurance with contractual liability endorsement, which shall provide coverage for limits of not less than \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000, and shall also include, but not be limited to, coverage for bodily injury, property damage, and products and completed operations. Following the

completion of construction, this insurance will be maintained (renewed annually) for a time period no less than through the period of the applicable Colorado statute(s) of limitation and, if applicable, the Colorado statute of repose. Such policy will name RTD as an additional insured.

2. **Umbrella/Excess Liability Insurance.** An umbrella/excess liability policy may be procured to meet the requirements of the Commercial General Liability Insurance limits. Such excess insurance shall be at least as broad as the Licensee's Commercial General Liability, Automobile Liability, and Workers' Compensation and Employers' Liability Insurance. Such policy will name RTD as an additional insured.
3. **Automobile Liability Insurance** with a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not be limited to, bodily injury liability and property damage liability, for any vehicles owned, used or hired. Such policy will name RTD as an additional insured.
4. **Workers' Compensation and Employers' Liability Insurance** covering all employees of Licensee, wherever they may be in the United States of America so long as they are engaged in the work covered by this Agreement. The policy or policies shall cover the entire liability of the Licensee as determined by the workers' compensation laws of the state or states under which such liability arises, and shall contain, so far as it is lawful to obtain the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Licensee and subcontractors. Employers' Liability Insurance shall provide coverage for limits of not less than \$500,000.
5. Prior to entry upon, above or adjacent to the RTD Property, Licensee agrees to furnish RTD with certificates of the required insurance for itself and for each of its subcontractor(s)' policy(ies). Licensee shall provide 30 days' advance notice of cancellation of the policy(ies) by registered or certified mail. Certificates of insurance shall be provided to the RTD Manager of Real Property as provided in Article 12.P.
6. Each insurance certificate shall have the following endorsements attached thereto:
 - e) An endorsement naming RTD an additional insured;
 - f) An endorsement evidencing coverage for a liability assumed under an insured contract for liability assumed by the Licensee and Licensee's subcontractors under this Agreement;
 - g) A Broad Form Property Damage endorsement, if the policy does not provide for the equivalent coverage; and
 - h) Waiver of subrogation in favor of and acceptable to the Licensors.
9. In the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance. For claims covered by the insurance specified herein, said insurance coverage shall be primary and non-contributory insurance with respect to the insured, additional insured parties, and their respective members, directors, officers, employees and agents and shall specify that coverage continues notwithstanding the fact that Licensee and its subcontractors have left the RTD Property.

- C. The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. Liability of Licensee under this Agreement shall not be limited to coverage provided under said insurance policies.
- E. Only those subcontractors of Licensee whose operations are covered by the required insurance will be authorized to work upon or about the RTD Property.
- F. In the event that any subcontractor does not have its own insurance coverage as set forth in this Article 6, Licensee shall cause such subcontractor to be a named insured under Licensee's policies.

ARTICLE 7. RESTORATION

Upon completion of the survey, Licensee shall promptly remove all tools, equipment and materials from the Licensed Area and restore the Licensed Area to substantially the same state and condition (including any irrigation or landscaping improvements disturbed by Licensee) as existed immediately prior to Licensee's and/or its contractors' and subcontractors' activities within the Licensed Area. This Section shall survive expiration or earlier termination of this License.

ARTICLE 8. HAZARDOUS MATERIALS

Licensee shall not use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any Hazardous Materials at, on, under, in, or about the Licensed Area or RTD Property in violation of applicable law. The term "Hazardous Materials" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any government authority having jurisdiction over the Licensed Area, the State of Colorado, or the United States.

ARTICLE 9. CONTRACTORS

All of the limitations and obligations imposed upon the Licensee pursuant to this Agreement shall apply with equal force and effect to any of Licensee's contractors or sub-contractors (together "contractors") performing any work on or about the Licensed Area or RTD Property. The Licensee shall be primarily liable and responsible to Licensor for all acts or omissions of any contractor employed upon or about the Licensed Area or RTD Property pursuant hereto. Nothing herein contained shall be construed to preclude the Licensor from proceeding or taking any legal action against the Licensee and any contractor individually or collectively.

ARTICLE 10. DIGGING OR BORING

No digging or boring activities is permitted on the RTD Property without RTD's prior written approval.

ARTICLE 11. SAMPLES/REMOVAL

No removal, manifesting, transport, testing and disposal of any samples or other materials, including Hazardous Materials, is permitted by this Agreement.

ARTICLE 12. GENERAL

A. Assignment. This Agreement, and any part or interest in this Agreement, may not be assigned by Licensee without the prior written consent of RTD. No RTD-approved assignment shall release Licensee from any liability hereunder. Any assignment in violation of this Agreement shall be null and void.

B. Agreement Binding. This Agreement and all of the covenants, terms and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

C. Execution in Counterparts. This Agreement (and each amendment, modification and waiver in respect of this Agreement) may be executed and delivered in counterparts (including by facsimile or email transmission), each of which will be deemed an original, but all of which when taken together shall constitute a single contract and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement (including by facsimile or email) shall be effective as delivery of a manually executed counterpart of this Agreement.

D. Laws to Apply; Jurisdiction and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines govern this Agreement. Jurisdiction and venue for all disputes shall be in the county in which the Licensed Area is located, and Licensee expressly submits itself to the jurisdiction thereof.

E. Amendment. This Agreement may not be amended except in writing by mutual agreement of Licensee and Licensors, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

F. No Agency. It is expressly understood and agreed that Licensors and Licensee do not intend to be and shall not in any respect be deemed agents of each other.

G. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

H. Liens. Licensee shall not permit any lien, claim or other charge to be placed on the RTD Property and Licensee shall promptly cause any such lien, claim or charge to be removed. If any mechanic's lien, claim or other charge is filed against the RTD Property, Licensee shall discharge the same of record by a release or bond within 30 days after the filing of any notice of such lien, claim or other charge. This provision shall survive termination, in whole or in part, of this Agreement.

I. Waiver; Severability. The failure of any party hereto to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

J. Legal Authority. The Licensors warrant that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Licensee to its terms. The person(s) executing this Agreement on behalf of the Licensee warrant(s) that such person(s) have full authorization to execute this Agreement.

K. No Dedication; Third Parties. Nothing herein shall be deemed to be a gift or dedication of any portion of the Licensed Area to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of either party shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

L. Breach. Any failure of Licensee to fulfill any of Licensee's obligations hereunder shall constitute a breach of this Agreement and subject Licensee to immediate termination of the Agreement, as well as damages and costs, including attorneys' fees.

M. Applicable Laws; Violation. Licensee shall use the Licensed Area in a safe and careful manner and shall comply with all applicable ordinances and regulations of the jurisdiction in which the Licensed Area is located; federal, state, and local laws; and all other rules of governmental authorities as may be in force and effect during the term of this Agreement. If at any time the use of the Licensed Area by Licensee violates said applicable ordinances or laws, Licensee shall cease and desist from continuing such use upon demand by RTD.

N. Additional Uses. Licensee understands and agrees that during the term of this Agreement, the RTD Property may be used by the public or otherwise, and Licensee shall conduct its work so as not to unreasonably interfere with such other uses.

O. Equipment. Licensee shall not use RTD equipment, tools or furnishings located in or about the Licensed Area without prior written approval by RTD.

P. Notices. Unless otherwise prescribed in this Agreement, any notices required to be given shall be provided in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

If to Licensors: Regional Transportation District
 Attn: Senior Manager, Real Property
 1560 Broadway, Suite 650
 Denver, Colorado 80202
 (303) 299-2440

With a copy to: Regional Transportation District
 Attn: Senior Manager, Commuter Rail
 Senior Manager, Commuter Rail
 711 W 31st Ave
 Denver, Colorado 80202
 Phone: (303) 299-2897
 In emergency: 303-299-2911

If to Licensee:

Phone:

The address or telephone number to which any notice, demand, or other writing may be provided may be changed by written notice to the above addressees.

Q. Entire Agreement. This Agreement represents the entire agreement between the parties hereto regarding the Licensed Area.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

By: _____
Henry J. Stopplecamp, P.E.
Assistant General Manager, Capital Programs
Date: _____

APPROVED AS TO LEGAL FORM
FOR THE
REGIONAL TRANSPORTATION DISTRICT

Associate General Counsel
Date: _____

LICENSEE

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
to Right of Entry License Agreement
Licensed Area

EXHIBIT B
to Right of Entry License Agreement
Installation of Art Pieces