

RIGHT OF ENTRY LICENSE AGREEMENT

This Right of Entry License Agreement ("Agreement") is made _____, 2021 (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").

- A. 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").
- B. 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 (the "IGA") for the purpose of installing Art Pieces (as defined in the IGA).
- C. 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 bus service and 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 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>

¹ Insert name of the Contractor and address.

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 and bus service, patrons and employees at Contractor's cost to protect and expedite train and bus 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

- A. 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.
- B. 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.
- C. 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.
- D. The provisions of this Article shall survive the termination, in whole or in part, of this Agreement.

ARTICLE 5. NO WARRANTY

- A. 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.
- B. 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.
- 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 Licensed Area, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

ARTICLE 6. INSURANCE

- A. 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 \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000, and shall also include, but not be limited to, coverage for bodily injury, property damage, and products and completed operations. The certificate of insurance must reflect a "per occurrence" policy for completed operations. 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:
 - 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 and Licensee'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 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 Agreement shall not be limited to coverage provided under said insurance policies.
- D. Only those subcontractors of Licensee whose operations are covered by the required insurance will be authorized to work upon or about the RTD Property.
- E. 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 Licensors 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 Licensors 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.

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