

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF COMMERCE CITY  
AND THE REGIONAL TRANSPORTATION DISTRICT  
REGARDING ARTWORK FOR THE NORTH METRO RAIL LINE**

**THIS INTERGOVERNMENTAL AGREEMENT** (the “**IGA**”) is made and executed this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”) by and between the **CITY OF COMMERCE CITY**, Colorado, a Colorado home rule municipality (the “**City**”) and the **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado (“**RTD**” or the “**District**”), each a “**Party**” and collectively the “**Parties.**”

**WHEREAS**, each of the Parties are authorized by Colorado law to enter into agreements with other local governments for the performance of public functions that they are authorized to perform on their own; and

**WHEREAS**, 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; and

**WHEREAS**, RTD and the City support public art and agree that public artwork enhances the areas in which such artwork is located, deters graffiti, and reduces maintenance costs; and

**WHEREAS**, the City and RTD desire to enter into this IGA to document the respective roles and responsibilities of the Parties in the installation of art pieces (the “**Art Pieces**”) and the implementation of artwork wraps (the “**PCS Wraps**”) on power control cabinets, communications, and signal houses (collectively, the “**PCS Houses**”) along the NMRL; and

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

**AGREEMENT**

1. **Acknowledgement and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this IGA.
2. **Term.** This IGA shall commence upon the Effective Date and shall continue until the terms and conditions of this IGA are fulfilled or until the Parties terminate this IGA in writing.
3. **Agreement to Cooperate.** The Parties hereby state their intention to work cooperatively to establish and maintain the Art Pieces and the PCS Wraps. More specifically, the Parties agree as follows:
  - a. Funding:
    - i. RTD will fund an amount not to exceed \$40,000 for the Art Pieces and an amount not to exceed \$4,000 for the selection of art for the PCS Wraps at NMRL stations within the City’s jurisdiction.

- ii. The City will fund an amount not to exceed \$22,000 for the Art Pieces at NMRL stations within the City's jurisdiction.
- b. Ownership, Location and Maintenance of Art Pieces:
  - i. RTD will own the Art Pieces.
  - ii. The City is responsible for selecting and procuring the Art Pieces pursuant to Section 3.e. below.
  - iii. The City will install or will cause to be installed the Art Pieces at locations mutually agreeable to the Parties on RTD property located near or at a NMRL Station.
  - iv. Provided that the Art Pieces meet the material and installation requirements set forth in (e)(iv) and (e)(v) below, RTD will be responsible for maintaining the Art Pieces after the City's contractor installs the Art Pieces.
  - v. The Art Pieces may be removed or relocated by mutual written agreement of the Parties.
- c. Ownership, Location and Maintenance of PCS Wraps:
  - i. RTD will own and maintain the PCS Wraps.
  - ii. RTD will be responsible for the production and installation of the PCS Wraps.
  - iii. RTD will install the PCS Wraps on PCS Houses at or near the NMRL station at locations specifically depicted in Exhibit A to this IGA.
  - iv. RTD reserves the right to remove the PCS Wraps at any time. RTD will notify the City prior to such removal, or in the event of exigent circumstances, as soon as practicable after removal.
- d. Right of Entry:
  - i. The City shall require City contractors, including artists, installing the Art Pieces on RTD property to enter into a Right of Entry agreement with RTD prior to working on RTD property, substantially in the form attached hereto as Exhibit B. The Parties may agree to a different form of Right of Entry depending on the complexity of the installation for the Art Pieces.
  - ii. Such Right of Entry agreement will require the City's contractor to obtain permission to perform work near a commuter rail line.
- e. Art Selection and Criteria:
  - i. The City will be responsible for all artist selection, committee approvals, contracting, inspection, coordination, oversight, and payment to commissioned

artists for the Art Pieces funded through this IGA as well as the selection of and payment to commissioned artists for the PCS Wraps funded through this IGA.

- ii. The City and RTD will form an art selection committee to include a minimum of one voting and one advisory member from RTD in order to select an artist for the Art Pieces and the PCS wraps.
- iii. To the extent in compliance with existing law, the City agrees to the following RTD guidelines in selection of images in the artwork: No obscenity, no illegal activity, no advertising of commercial products, no promotion of political viewpoints, and no promotion of tobacco or marijuana products.
- iv. The City must require that the creator and/or constructor of the Art Pieces establish a detailed design life for the Art Pieces and identify consumable and replaceable components. The materials for the Art Pieces must be designed to be corrosion resistant, with a life of 30 years for wear and tear. In addition, any paint system for the Art Pieces must be designed to provide a minimum 15-year limited warranty from loss of shade or shine.
- v. The materials and the coatings used for and the general size of and location of the Art Piece are subject to RTD's approval.

f. Payments and Reimbursements

- i. The City shall invoice RTD for contractual work completed and paid to the City's contractor and/or the artist for the Art Pieces. The City shall invoice RTD for the City's payment to artists whose artwork is selected for the PCS Wraps. The City shall include copies of all invoices with its requests for reimbursement.
  - ii. The City may request reimbursement from RTD when the installation of the Art Pieces at a NMRL station is complete and when the City has paid the artist selected for the PCS Wraps.
  - iii. RTD shall pay the City within 30 days of receipt of the City's invoices, subject to the cumulative funding caps set forth in paragraph 3.a. above.
  - iv. The City shall submit all reimbursement requests no later than December 31, 2020. If installation of the Art Pieces is not completed by December 31, 2020 due to no fault of the City, the City will be entitled to reimbursement from RTD for any funds the City expended in reliance of this IGA, subject to the cumulative funding caps set forth in paragraph 3.a. above.
- g. The Parties agree that the installation of the Art Pieces and PCS Wraps must be complete no later than December 31, 2020, unless otherwise agreed to in writing by the Parties.
- h. RTD is under no obligation to provide capital repairs to or to replace the Art Pieces or PCS Wraps; provided that RTD has complied with its maintenance obligations set forth

in sections 3.b. and 3.c. of this IGA, and RTD will be responsible for repairing any damage caused by RTD to the Art Pieces or PCS Wraps.

- i. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this IGA.
4. **Disputes.** Disputes will be initially resolved between the project liaisons. The project liaison for the City will be the City's Community Relations Liaison. RTD will provide the City with the RTD project liaison within seven (7) days of execution of this IGA. If the respective project liaisons are unable to resolve the dispute, they will document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process: (i) the Public Information Manager for NMRL and the assigned City liaison, (ii) RTD's NMRL Project Manager and the City Traffic Engineer, (iii) RTD's Assistant General Manager for Capital Programs and the City's Deputy City Manager-Community Services, and (iv) RTD's General Manager and the City's Manager.
5. **Liability.** As between the Parties, without waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., each Party hereto is responsible for its own negligence in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or design or construction of the Project, it agrees to give the other Parties prompt written notice of such claim or suit.
6. **Notice.** All notices, consents, or other instruments or communications provided for under this Agreement will be in writing, signed by the party giving the same, and will be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as FedEx; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments will be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other parties:

City of Commerce City: Daniella Villareal  
Community Relations Liaison  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO 80022

With a copy to: Sarah L. Geiger  
Senior Assistant City Attorney  
City of Commerce City  
7887 E. 60th Avenue  
Commerce City, Colorado 80022

RTD: Regional Transportation District  
Attn: Charles G. Culig, P.E., Engineering Project  
Manager, North Metro Rail Line  
1660 Blake Street  
Denver, CO 80202

With a copy to: General Counsel  
Regional Transportation District  
1660 Blake Street  
Denver, CO 80202

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, upon electronic confirmation email transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

7. **Amendment.** This IGA may be amended from time to time by agreement among the Parties hereto, provided, however, that no amendment, modification, alteration, or extension of the terms or provisions hereof shall be binding upon any Party unless the same is in writing and duly executed by all Parties hereto.
8. **Appropriation.** Pursuant to section 29-1-110, C.R.S., any financial obligations of the Parties contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis.
9. **Colorado Law.** The laws of the State of Colorado shall govern this IGA. Venue for any action hereunder shall be in the Adams County District Court, Brighton, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.
10. **Separate Entities.** The Parties enter into this IGA as separate, independent governmental entities and shall maintain such status throughout.
11. **No Third-Party Beneficiaries.** The enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person under such IGA. Any beneficiary of the terms and conditions of this IGA are not intended beneficiaries but are incidental beneficiaries only.
12. **Entirety.** This IGA merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.
13. **No Waiver.** A waiver by any Party to this IGA of the breach of any term or provision of this IGA shall not operate or be construed as a waiver of any subsequent breach by either Party.
14. **Merger.** This IGA represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations will be deemed

merged herein. No representations, warranties, promises or agreements, express or implied, will exist between the Parties, except as stated herein.

15. **Authority.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.
16. **Severability.** To the extent that this IGA may be executed and performance of the obligations of the Parties may be accomplished within the intent of the IGA, the terms of the IGA are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure will not affect the validity of any other terms or provision hereof.
17. **Paragraph Headings.** The captions and headings set forth in this IGA are for convenience of reference only and will not be construed so as to define or limit its terms and provisions.
18. **Counterparts.** This IGA may be executed in counterparts. Signatures on separate originals will constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures will constitute original signatures.

**[SIGNATURE PAGE[S] FOLLOW]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this IGA on the date first set forth above.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Benjamin A. Huseman, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sarah L. Geiger, Senior Assistant City Attorney

**THE REGIONAL TRANSPORTATION DISTRICT,**  
a political subdivision of the State of Colorado

By: \_\_\_\_\_  
Henry J. Stoppolecamp, P.E., AGM, Capital Programs  
Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

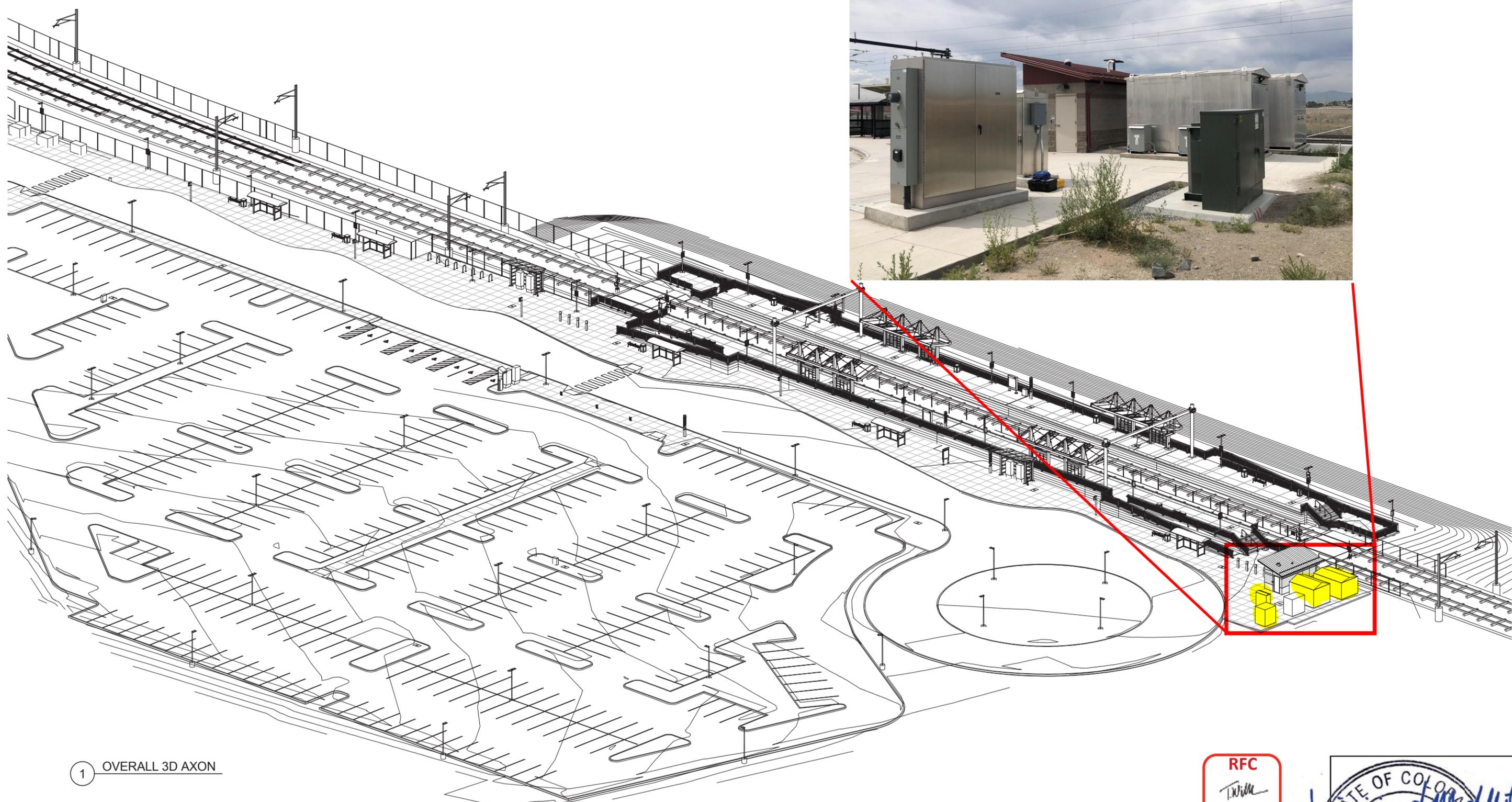
By: \_\_\_\_\_  
Aimée Beckwith, Associate General Counsel  
Date: \_\_\_\_\_

**Exhibit A**  
**Location of PCS Wraps**

## Exhibit A

Relay/Signal/Communication House  
Artwork Wraps Locations

72nd Ave Station  
Commerce City



1 OVERALL 3D AXON

**RFC**  
*TJM*  
 03-039.12A.06  
 11/23/2016



USER: TBurke  
 9/24/2016 12:41:20 PM  
 NM-A-AS-3010

NO.	REVISIONS	BY	DATE
0	ISSUED FOR CONSTRUCTION	VAM	09/16/2016

DESIGNED BY: MBB	DATE: 07/28/2014	CHECKED BY: TLB	DATE: 09/14/2016	HORIZ SCALE: N/A
DRAWN BY: TJG	DATE: 07/28/2014	APPROVED BY: VAM	DATE: 09/14/2016	VERT. SCALE: N/A

**IRON HORSE**  
ARCHITECTS

475 17th Street Suite 720  
Denver, Colorado 80202  
iron-horse-architects.com

RESPONSIBLE DESIGN

**RTD FasTracks**  
North Metro Rail Line

REGIONAL TRANSPORTATION DISTRICT  
1600 BLAKE STREET  
DENVER, COLORADO 80202  
(303) 628-9000

**NORTH METRO RAIL LINE**

ARCHITECTURAL  
COMMERCE CITY AT 72ND AVE STATION  
OVERALL PLATFORM 3D

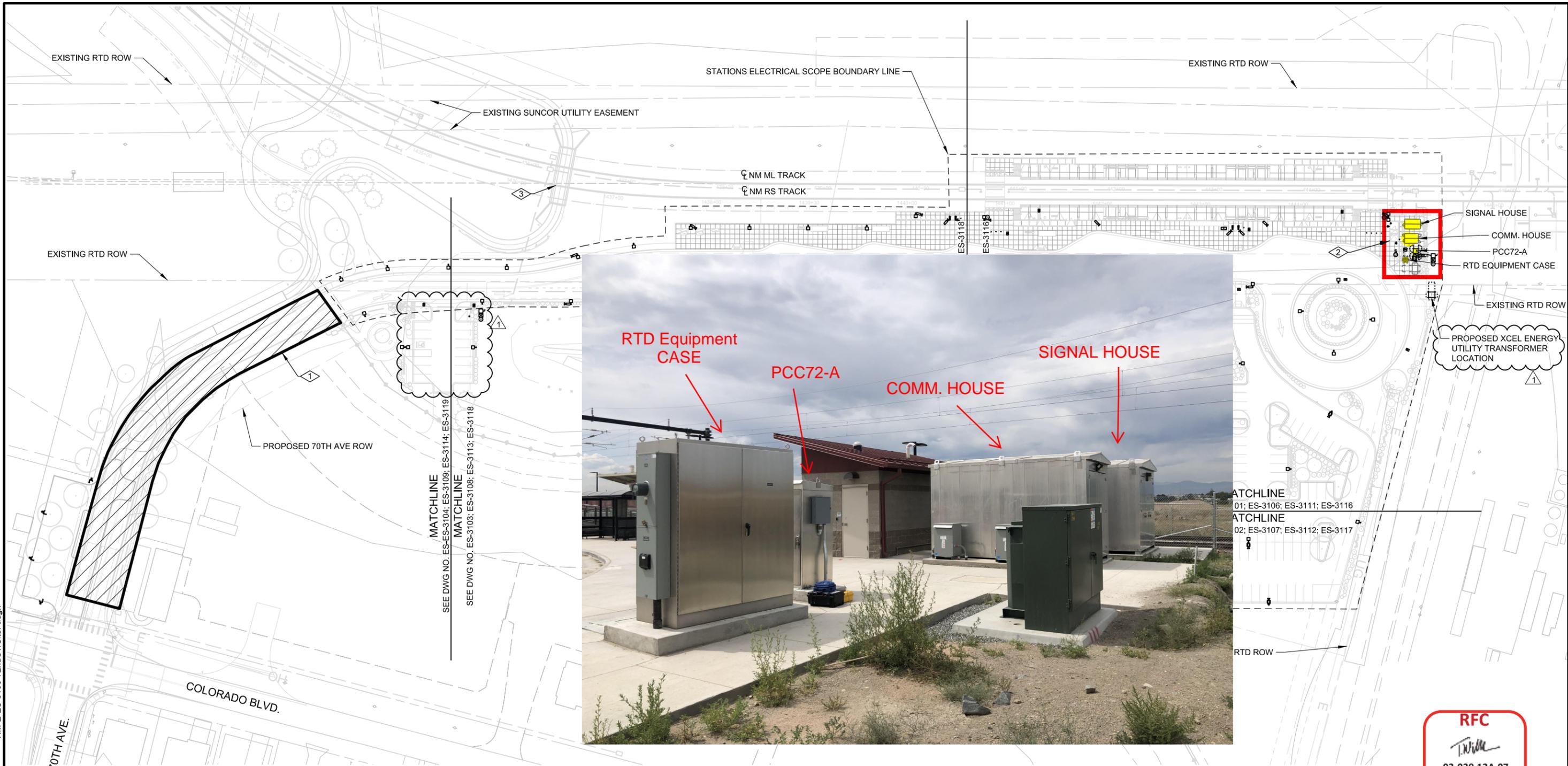
DWG No. AS-3010

NM-E-ES-3100-72ndOvrSitePl.dgn

1:52:18 PM

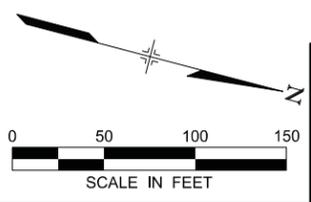
3/7/2019

USER: arosario



1 OVERALL ELECTRICAL SITE PLAN

- NOTES:**
- E. 70TH AVENUE ENTRY DRIVE NOT IN THIS SCOPE. LIGHTING ALONG 70TH AVENUE SOUTH OF THE TRAIL HEAD PARKING LOT IS SHOWN IN PACKAGE DP08.
  - REFER TO ELECTRICAL STANDARD DETAILS, SERIES ES-1000, FOR DRIVERS RELIEF STATION INFORMATION.
  - REFER TO SYSTEMS DRAWING SERIES JE AND COMMUNICATION DRAWING SERIES JA FOR ELECTRICAL AND COMMUNICATIONS SCOPE FOR PEDESTRIAN UNDERPASS.



**RFC**  
*[Signature]*  
 03-039.12A.07  
 Rev 01  
 3/27/2019

NO.	REVISIONS	BY	DATE
1	DCN000168 - TRAILHEAD PARKING LOT LIGHTING	KAT	03/05/2019
0	ISSUED FOR IFC SUBMITTAL, CDRL 03-039.12A.06	KAT	09/16/2016

DESIGNED BY: SRJ/GEP DATE: 09/14/2016  
 DRAWN BY: AR/TE DATE: 09/14/2016

REGIONAL RAIL PARTNERS  
 Balfour Beatty / GRAHAM JOINT VENTURE

CHECKED BY: KAT DATE: 09/15/2016  
 APPROVED BY: KAT DATE: 09/16/2016

SSG MEP, Inc.  
 3025 S. Parker Road, Suite 1100  
 Aurora, Co 80014-2950  
 303.696.2602 fax 303.696.0812  
 www.ssgroupinc.com

RTD FasTracks  
 North Metro Rail Line

REGIONAL TRANSPORTATION DISTRICT  
 1600 BLAKE STREET  
 DENVER, COLORADO 80202  
 (303) 628-9000

**NORTH METRO RAIL LINE**

**ELECTRICAL**  
**COMMERCE CITY AT 72ND STATION**  
**OVERALL SITE PLAN**

COLORADO LICENSED  
 SANDRA C. SCAWON  
 33812  
 03/25/19  
 PROFESSIONAL ENGINEER

DWG No. ES-3100



**Exhibit B**  
**Form of Right of Entry**

## 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 \_\_\_\_\_,<sup>1</sup> 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 \_\_\_\_\_, 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 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](mailto:NM-Construction@rtd-denver.com) or phone (303) 299-6979, the RTD Senior Manager, Commuter Rail, at office number (303) 299-2897 or

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<sup>1</sup> Insert name of the Contractor and address.

[michael.millage@rtd-denver.com](mailto:michael.millage@rtd-denver.com), and RTD's Utility Engineering/Construction Team by email at [UtilityDesignConstruction@rtd-denver.com](mailto: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

- 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 \$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. Railroad Protective Liability Insurance (*only required if the construction activities allowed under this Agreement are within 50 feet of an operational commuter rail alignment*). This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Facilities. If further maintenance of the Facilities is needed at a later date, an additional Railroad Protective Liability Insurance policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and shall be endorsed to include the following: (i) the Pollution Exclusion Amendment, (ii) the Limited Seepage and Pollution Endorsement, (iii) the Evacuation Expense Coverage Endorsement. In addition, (a) no other endorsements restricting coverage may be added, (b) the original policy must be provided to Licensor prior to performing any work or services under this License, and (c) the definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."
6. Contractors Pollution Liability Insurance including contractual liability and providing third-party coverage for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed. The amount of such coverage shall be no less than \$5,000,000 per occurrence and aggregate.
7. 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.
8. 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) An endorsement providing that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated, including an endorsement "Contractual Liability - Railroads" (ISO CG 24 17) to amend the definition of "insured contract" to delete the "railroad exclusion," provided, however, that such endorsement is not required if Railroad Protective Liability Insurance is provided (*this endorsement is required if any construction work performed under this contract is within fifty (50) feet of RTD's commuter rail alignment*);
  - d) A Broad Form Property Damage endorsement, if the policy does not provide for the equivalent coverage; and
  - e) 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 subcontractors (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.

#### 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 Licensor, 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 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 Licensor warrants 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 Licensor:     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