

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made _____, 2018 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 TOWN OF ERIE, a statutory town in the counties of Boulder and Weld, State of Colorado, whose address is 645 Holbrook Street, Erie, Colorado 80516 ("Licensee").

A. RTD owns the land and railroad tracks known as the Boulder Industrial Lead in the Counties of Adams, Boulder, Broomfield and Weld, State of Colorado.

B. Licensee desires to construct, maintain, use and operate the Facilities (defined below) within certain portions of RTD's railroad right-of-way and property east of Northeast County Line Road in the vicinity of High Street south of downtown Erie, Town of Erie, Weld County, Colorado shown on Exhibit A, attached and incorporated herein (collectively, "RTD Property")

In consideration of the mutual promises contained herein and for the sum of \$3,500.00 to be paid by Licensee to Licensor upon execution of this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. LICENSE

- A. 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 RTD Property (the "License") solely for the purpose of constructing, maintaining, using and operating a 10-foot wide at-grade pedestrian concrete pathway in an area 45-foot wide crossing 100 feet across the railroad right-of-way (the "Facilities"). The Facilities shall be installed in the approximate orientation and location shown on Exhibit B, attached and incorporated herein. The licensed location is referred to herein as the "Premises".
- B. 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.
- C. Licensee acknowledges that although RTD is not actively using the tracks located on the RTD Property as of the date of this Agreement, at such time as RTD commences use of such tracks for passenger rail service, Licensee will be required either to (i) upgrade the Facilities at Licensee's sole expense to comply with RTD, Colorado Public Utilities Commission and federal, state and local requirements and regulations for an active passenger service rail line; or (ii) remove the Facilities from the RTD Property and Premises and this Agreement will terminate pursuant to the provisions of Article 3.B.

- 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 execution by both parties and shall remain in effect until terminated by either party pursuant to the provisions of Article 3.

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 in the event the Facilities materially interfere, in Licensor's sole discretion, with Licensor's use of the RTD Property or the Premises. Notice of termination shall be provided by Licensor to Licensee in writing 9 months 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.
- B. 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 shall survive termination of this Agreement.
- C. 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.
- D. 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.
- E. Certain provisions of this Agreement shall survive termination of the Agreement.

ARTICLE 4. CONSTRUCTION

- A. 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 C ("Contractor ROE"). Licensee's contractor shall be experienced in removing and replacing track panels, track with long ties and installing concrete crossing material and shall be prequalified and approved by RTD. 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.

- B. Licensee shall install the Facilities in accordance with Exhibit B.
- C. All work shall be coordinated by Licensee with Kirk Strand, RTD Engineering Services Manager at office number (303) 299-6948 and Mitch Kuharski, RTD Construction Project Manager, at (303) 299-6980. Licensee shall obtain an Access Permit (defined below) if required by Licenser in accordance with Article 5 (*Maintenance and Emergency Access*). Licenser reserves the right to have RTD personnel present during construction, maintenance, modification, adjustment, relocation or removal of the Facilities. Licensee shall promptly remove all tools, equipment and materials from the Premises upon completion of construction of the Facilities and restore the Premises to substantially the same state and condition as when entered upon.
- D. The Facilities shall be designed in accordance with, and any construction on the Premises related to the Facilities shall be done in strict compliance with, applicable provisions of Licenser's design criteria.
- E. Licensee shall ensure that the Facilities are constructed with due care, at Licensee's expense, and in full compliance with federal, state, and local laws and applicable industry and RTD construction standards. Licensee shall provide certification that the trail crossing complies with ADA Standards for state and local accessibility requirements.
- F. Licensee's contractor shall install the at-grade pedestrian crossing by removing the existing track panels and installing 10-foot tie track panels to support 16 linear feet of precast concrete crossing material and a 10-foot concrete pathway connecting to the concrete crossing material. The gradient of the trail shall be away from the tracks to provide for positive drainage. Advance warning signs will be placed in accordance with the Manual of Uniform Traffic Control Devices (MUTCD), Part 8, including cross bucks, yield signs and EXEMPT signs on each approach to the crossing. Graded areas shall be reseeded for stabilization. No plantings or obstructive material will be place inside the railroad right-of way.
- G. After construction has been completed, RTD shall have the right to inspect and accept the installation of the Facilities and require Licensee to undertake corrective work if the work fails to conform to RTD design criteria, RTD construction standards, federal, state or local laws, and applicable industry standards. Licensee shall restore the RTD Property, including re-vegetation, to substantially the same state and condition as when entered upon.
- H. Licensee shall, within 30 days of RTD's inspection and acceptance, provide RTD with one full-sized set of as-built drawings showing the exact location of the Facilities as constructed, including horizontal and vertical ties to referenced benchmarks. If any Facility location shown on the as-built drawings is reasonably determined by RTD to be materially different from the approximated location shown on Exhibit A and Exhibit B, RTD shall have the right to require Licensee to undertake corrective work.

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 acknowledges that although RTD is not actively using the tracks located on the RTD Property as of the date of this Agreement, in the event RTD commences use of such tracks for passenger rail service and Licensee has upgraded the Facilities for an active rail line as required in Article 1.C, Licensee shall be responsible for any additional permits and requirements at Licensee's sole cost and expense, provided that such additional permits and requirements will not materially alter the terms of this Agreement and Licensee's right to operate and use its Facilities as upgraded unless such additional permits and requirements are required by law or regulation.
- C. Licensee shall, and shall require its contractor(s) to, obtain an approved right of way access permit ("Access Permit") from RTD Rail Operations whenever Licensee or its 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 at <http://www.rtd-denver.com/UtilityConstruction.shtml>. 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.
- D. 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.
- E. 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 site.
 - 2. Licensee's employees and contractors must keep proof of RTD safety training completion readily available while working on the site.
 - 3. Licensee's employees and contractors must have RTD safety trained and qualified look-outs on site for Licensee's work.
 - 4. Licensee's employees and contractors must wear orange MUTCD 2009 Class II compliant high visibility safety vests at all times while working on the site.
 - 5. Licensee's employees and contractors must notify RTD dispatch control at (303) 299-3480 prior to entering, and when clear of, the Premises.
 - 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 work area.
- F. 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.

- G. 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.
- H. **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. MODIFICATION OR RELOCATION

Licensee shall modify, adjust, or relocate all or any portion of its Facilities within such timeframe as RTD may designate whenever RTD shall find such action necessary or desirable. Licensee shall bear the entire cost and expense incurred in connection with any such modification, adjustment, or relocation 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 modified, adjusted, or 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 RTD Property, apply to the Facilities as modified, adjusted, or relocated and this Agreement shall terminate with respect to all or such part of the Premises that no longer contain the Facilities. The provisions of Article 4 shall also apply to the modification, adjustment, or relocation of the Facilities.

ARTICLE 7. DIGGING AND BORING

Prior to performing any digging or boring activities on the Premises, Licensee shall determine if a telecommunications system or other utility is buried anywhere on or about the Premises in the location where Licensee will perform such digging or boring activities. If there is such a telecommunications facility or other utility, Licensee will determine the owner of such telecommunications system or other utility, and take such actions in cooperation with the owner(s) as are necessary so as not to damage such system or utility.

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 Licensors:	Regional Transportation District Attn: Manager of Real Property 1560 Broadway, Suite 650 Denver, Colorado 80202 (303) 299-6904
With a copy to:	Regional Transportation District Attn: Manager, Engineering Services 1560 Broadway, Suite 700 Denver, Colorado 80202 Phone: (303) 299-6948 In emergency: 303-299-2911
If to Licensee:	Town of Erie Attn: Farrell Buller Assistant to the Town Administrator Community Services 645 Holbrook Erie, Colorado 80516 Phone: (303) 926-2700

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, including Environmental Damages (defined in Article 12.G. below), 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 Licensee's activities. 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. Nothing in this section shall be deemed to waive any of Licensee's or Licensors' privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*
- B. Licensee shall contractually require each contractor 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 such contractor's use of the Premises or the RTD Property hereunder, including, but not limited to, Environmental Damages (defined below), as further provided in Exhibit B.

- 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. This Agreement is subject to all other prior granted or reserved rights and interests in the Premises, if any, whether of record or not.
- 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, 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 the following types of insurance throughout the Term of this Agreement and shall require that its contractors and subcontractors procure and maintain, the following types of insurance, at 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 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. Automobile liability insurance with a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not 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
 3. Workers' Compensation and Employers' Liability Insurance covering all employees of Licensee's 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's 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 Contractor's and subcontractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$ 500,000.

4. Railroad Protective Liability Insurance (only required if the construction activities allowed under this License are within 50 feet of an operational light rail or commuter rail alignment). This insurance shall name only Licensors 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 include the following: (i) endorsed to include the Pollution Exclusion Amendment, (ii) endorsed to include the Limited Seepage and Pollution Endorsement, (iii) endorsed to include Evacuation Expense Coverage Endorsement. In addition, (x) no other endorsements restricting coverage may be added, (y) the original policy must be provided to Licensors prior to performing any work or services under this License, and (z) 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."
 5. Prior to entry upon, above or adjacent to the RTD Property, Licensee agrees to furnish RTD with a certificate of insurance for itself, if applicable, and for each of its contractor(s)' policy(ies). Licensee shall provide 30 days' advance notice of cancellation of the policy(ies) by Registered or Certified mail.
 6. Each insurance certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming RTD an additional insured;
 - b) An endorsement providing for Blanket Contractual Liability coverage for liability assumed by the Licensee 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 as set forth in A.4 of this article;
 - d) A Broad Form Property Damage endorsement; and
 - e) Waiver of subrogation in favor of and acceptable to the Licensors.
 7. 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.
- B. All insurance coverage provided to RTD as additional insured must be primary and noncontributory to any other coverage available to RTD.
- 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. ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this "Environmental Obligations" article, the terms "Activity" and "Activities" shall include any action or omission of Licensee, and/or the subsidiaries, affiliates, agents, contractors, employees, contractors, invitees, successors or assigns of Licensee.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements (defined in Article 12.F. below), Licensee shall not cause, permit or suffer any Hazardous Material (defined in Article 12.E. below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the RTD Property or any portion thereof by Licensee, its subsidiaries, affiliates, agents, employees, contractors, invitees, successors or assigns, or any other person.
- C. No Violations of Environmental Requirements. Licensee, in performing the Activities shall not cause, permit or suffer the existence or the commission by Licensee, its subsidiaries, affiliates, agents, employees, contractors, invitees, or successors or assigns, of a material violation of any Environmental Requirements upon, about or beneath the RTD Property or any portion thereof.
- D. No Environmental or Other Liens. Licensee, in performing the Activities, shall not create or suffer to exist with respect to the RTD Property, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1) or any similar state statute.
- E. For purposes of this Agreement, "Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:
1. defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), and/or the Colorado Hazardous Waste Act Sections 25-15-101 et seq., Colorado Revised Statutes and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3;
 2. characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) and/or the Colorado Hazardous Waste Act (§ 25-15-311 et seq., Colorado Revised Statutes); the Colorado Solid Waste Act (§ 30-20-100.5 et seq., C.R.S); the Colorado Water Quality Control Act (§ 25-8-101 et seq., Colorado Revised Statutes), Colorado Air

Pollution Prevention and Control Act (§ 25-7-101 et seq., Colorado Revised Statutes), Title 8 Article 20.5, Colorado Revised Statutes and any federal, state or local regulations and associated guidance promulgated thereunder; or

3. otherwise posing a present or potential risk to human health, welfare or the environment,

including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.

F. For purposes of this Agreement, "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:

1. all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and
2. all requirements pertaining to the protection of the health and safety of employees or the public.

G. For purposes of this Agreement, "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the RTD Property or migrating or threatening to migrate to or from the RTD Property, or the existence of a violation of Environmental Requirements pertaining to the RTD Property and including without limitation:

1. damages for personal injury, or injury to property or natural resources occurring upon or off of the RTD Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Licensee;
2. fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or

the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the RTD Property or any other property otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and

3. liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in Article 12.G.2 herein.

ARTICLE 13. SAMPLES/REMOVAL

As between Licensee and Licensor, Licensee shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials, including Hazardous Materials, removed from the Premises or generated as a result of activities performed pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such activities that it undertakes or is required to undertake pursuant to federal, state, and local laws and applicable industry standards. Licensee states and agrees that as between Licensee and Licensor, Licensee is the sole Generator (as the term "Generator" is used in applicable statutes and regulations concerning the removal, transport and/or disposal of Hazardous Materials, substances, waste or other contaminants) of any materials, including Hazardous Materials, removed from the Premises by Licensee, its agents, consultants or contractors or generated as a result of sampling and/or testing activities undertaken by Licensee, its agents, consultants or contractors.

ARTICLE 14. GENERAL

- A. Assignment. This Agreement may not be assigned by Licensee, or any part thereof, or any interest therein, 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. This Agreement shall become effective when it shall have been executed by each party and when each party shall have received counterparts hereof, which, when taken together, bear the signatures of the other party hereto, and thereafter shall be binding upon and inure to the benefit of the Parties hereto and their respective 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 Premises without prior written approval by RTD.
- P. Entire Agreement. This Agreement represents the entire agreement between the parties hereto regarding the Premises.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

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

Date: _____

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT



Lori L. Graham
Associate General Counsel
Date: 5-17-18

LICENSEE
TOWN OF ERIE

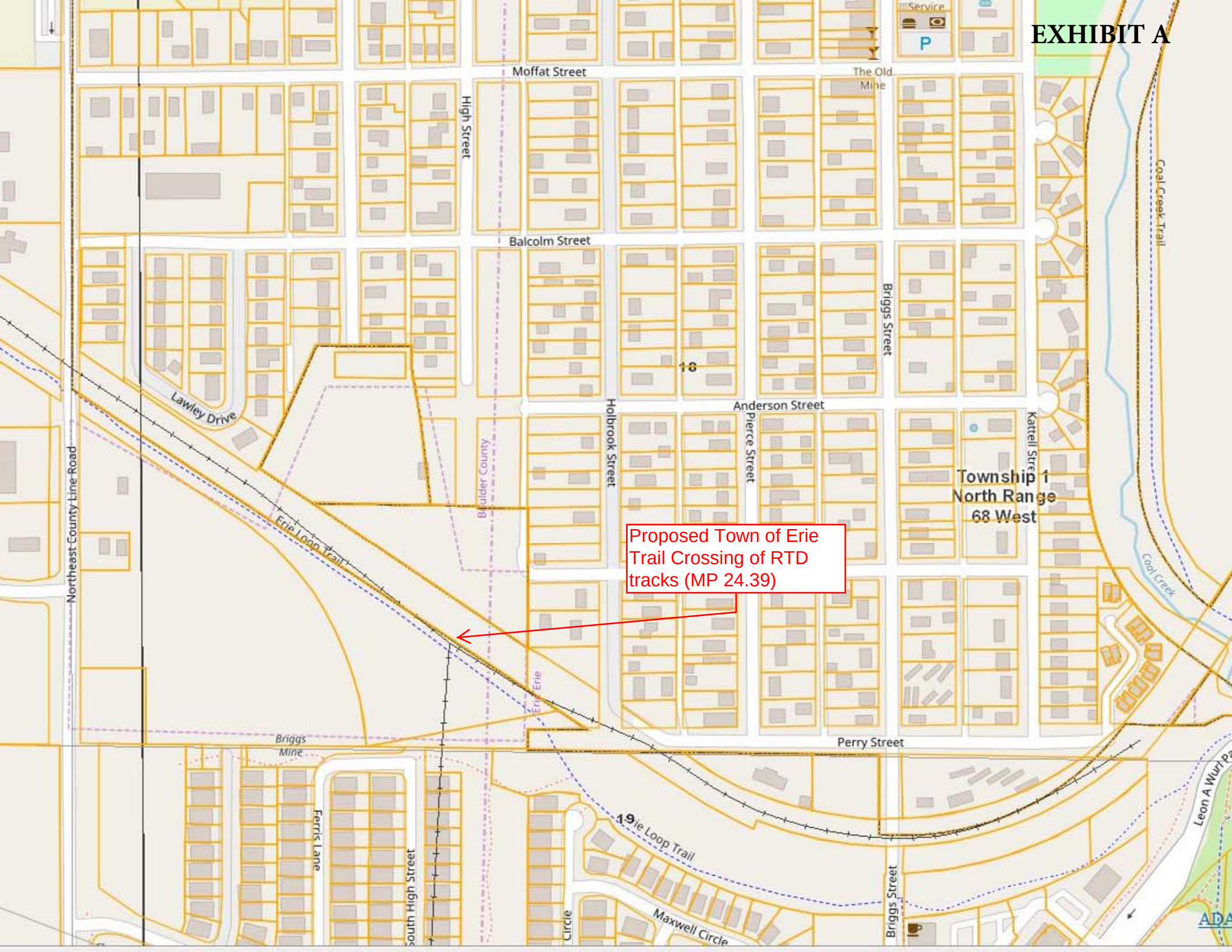
By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
to
License Agreement



Proposed Town of Erie
Trail Crossing of RTD
tracks (MP 24.39)

Exhibit B
To License Agreement

TRAIL IMPROVEMENTS
LINEAR CONNECTION

ERIE, COLORADO

PROGRESS SET:
NOT FOR CONSTRUCTION
These documents are incomplete, are
released for review only,
and are not intended for bidding
or construction purposes.

NOT VALID WITHOUT ORIGINAL SIGNATURE

KEY PLAN:

REVISIONS:

DATE DATE

DRAWN BY:

KS

REVIEWED BY:

NH

PROJECT NUMBER:

17017

DATE:

XX.XX.2018

ISSUE:

90% CONSTRUCTION

DOCUMENTS

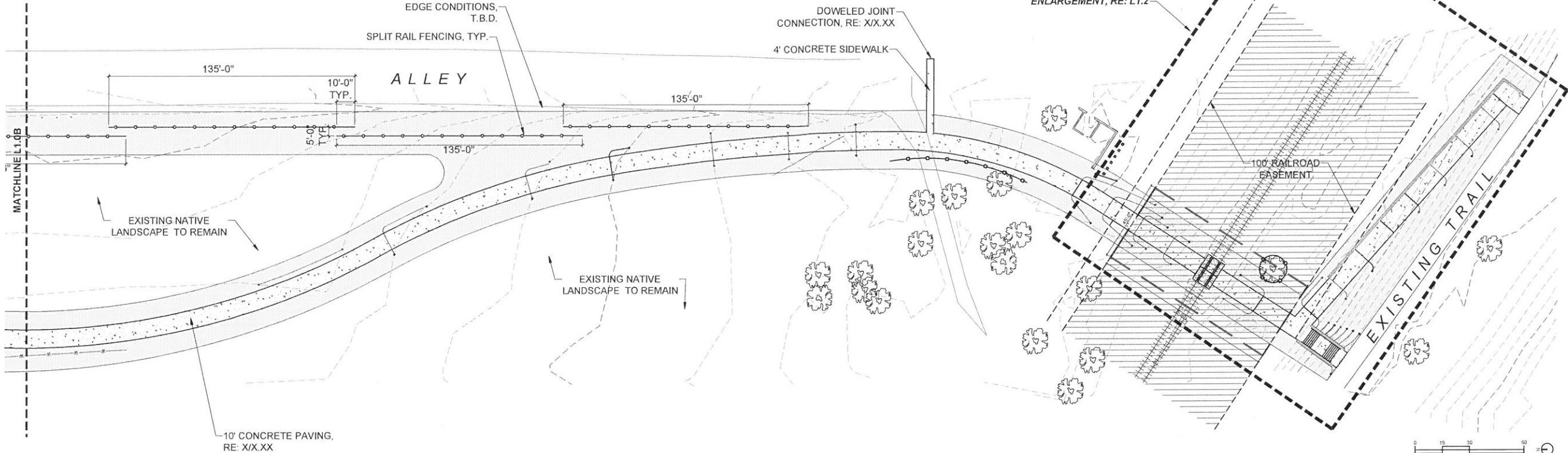
SHEET TITLE:

LAYOUT & MATERIALS

PLAN

SHEET NUMBER:

L1.1



LAYOUT & MATERIALS PLAN LEGEND

- EXISTING RAILROAD TRACKS
- RAILROAD EASEMENT
- DOWELED JOINT CONNECTION
- CONCRETE PAVING
- ADA CROSSWALK RAMP
- CONCRETE RETAINING WALL
- CONCRETE STAIRS
- HANDRAIL
- SPLIT-RAIL FENCING
- TREE PROTECTION FENCING
- EXISTING TREE TO REMAIN
- NATIVE SEEDING

GRADING LEGEND

- EXISTING CONTOURS
- PROPOSED CONTOURS
- SLOPE
- SPOT GRADE
- TOP WALL / BOTTOM WALL
- GRADE BREAK

TRAIL IMPROVEMENTS
LINEAR CONNECTION

ERIE, COLORADO

PROGRESS SET:
NOT FOR CONSTRUCTION
These documents are incomplete, are
released for client review only,
and are not intended for bidding
or construction purposes.

NOT VALID WITHOUT ORIGINAL SIGNATURE

KEY PLAN:

REVISIONS:	DATE

DRAWN BY:
KS

REVIEWED BY:
NH

PROJECT NUMBER:
17017

DATE:
XX.XX.2018

ISSUE:
**90% CONSTRUCTION
DOCUMENTS**
SHEET TITLE:
**LAYOUT & MATERIALS
PLAN ENLARGEMENT**
SHEET NUMBER:

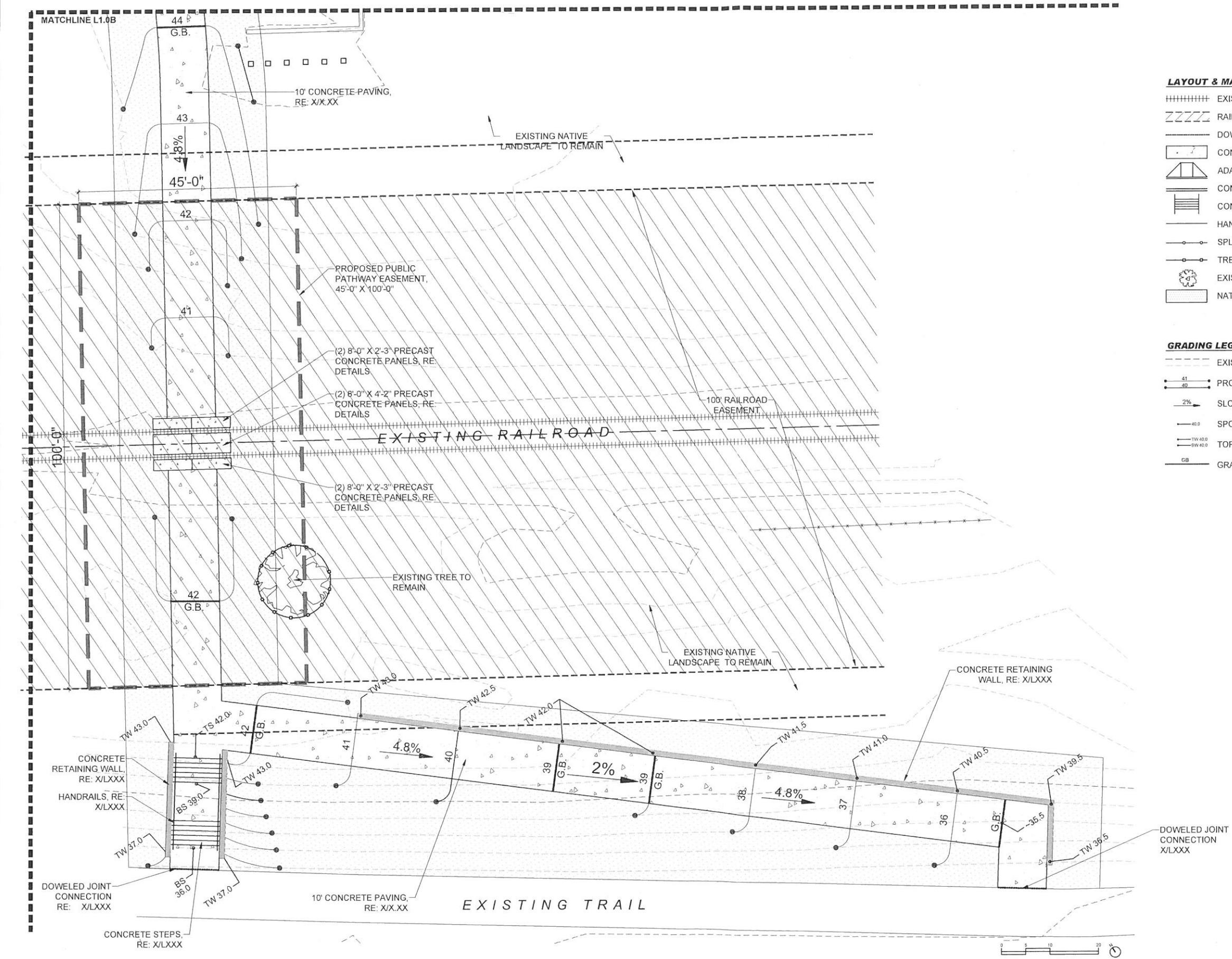
L1.2

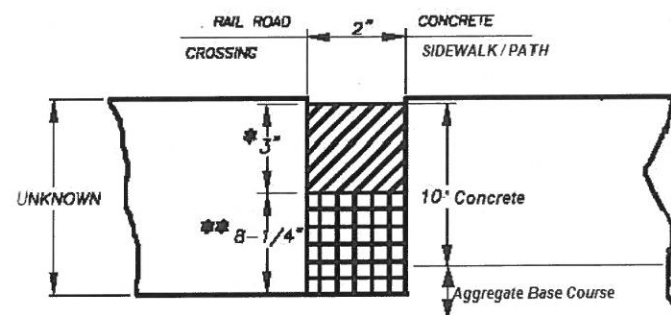
LAYOUT & MATERIALS PLAN LEGEND

- EXISTING RAILROAD TRACKS
- RAILROAD EASEMENT
- DOWELED JOINT CONNECTION
- CONCRETE PAVING
- ADA CROSSWALK RAMP
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GRADING LEGEND

- EXISTING CONTOURS
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- SLOPE
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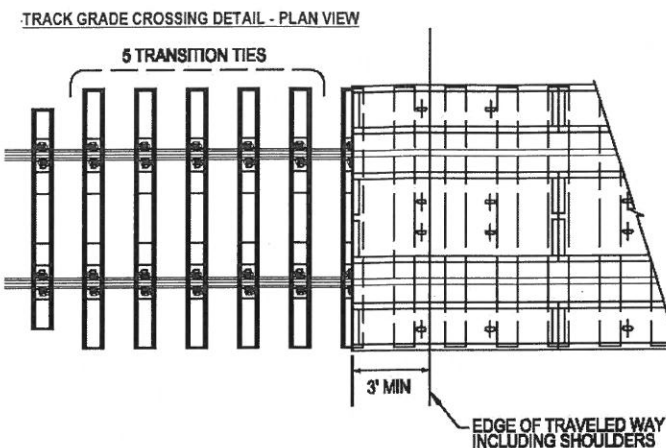




NOTES:

1. *2" WIDE X 3" DEEP CHEMICALLY RESISTANT NEOPRENE JOINT SEAL SHALL BE USED. ALTERNATIVE EQUIVALENT MATERIAL MAY BE USED, IF APPROVED BY THE ENGINEER.
2. **PREFORMED EXPANSION JOINT FILLER, AS APPROVED BY THE ENGINEER.
3. PEDESTRIAN TRAIL CONCRETE PAVEMENT INSIDE RAILROAD RIGHT-OF-WAY SHALL BE PLACED ON 4" AGGREGATE BASE COURSE (CLASS 6).

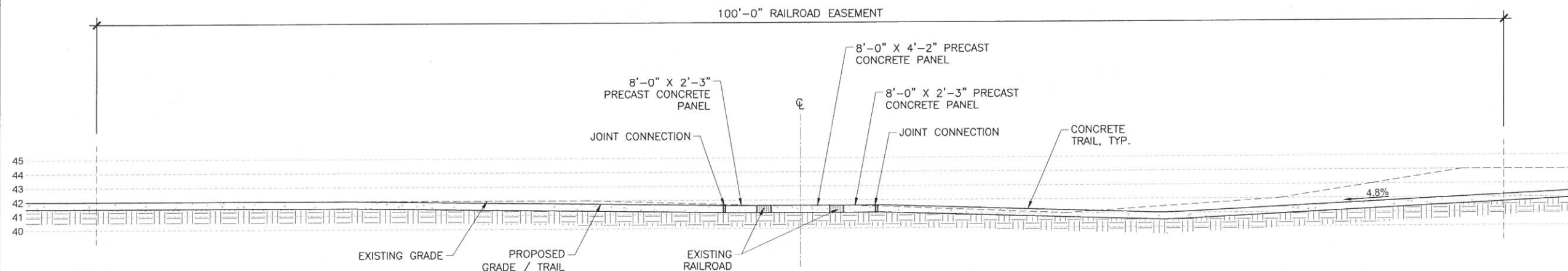
01 RAILROAD JOINT DETAIL
N.T.S.



NOTES FOR GRADE CROSSING TYPICAL SECTION:

1. CROSS TIE SIZE AND SPACING AT GRADE CROSSING SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.

02 RAILROAD GRADE CROSSING DETAIL
N.T.S.



03 RAILROAD CROSSING PROFILE SECTION
1/4" = 1'-0"

Exhibit C
To License Agreement
Form of Contractor's Right of Entry Agreement

EXHIBIT C
To License Agreement

FORM OF
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Agreement") is made _____, 2018 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 _____ ("Contractor").

A. RTD and _____² ("Licensee") are parties to a certain License Agreement dated _____, 2018³ (the "License") whereby RTD grants a non-exclusive, revocable license and permission to _____⁴ to enter upon and have ingress to and egress from the RTD Property, pursuant to the terms of the License, for the purpose of constructing, maintaining, using and operating the Facilities, as that term is defined in the License.

B. _____⁵ has employed Contractor and requested RTD to permit Contractor to perform the work related to the Facilities and RTD is agreeable thereto, subject to the following terms and conditions.

In consideration of the permission of RTD for Contractor to enter upon the RTD Property pursuant to the License, Contractor hereby agrees as follows:

ARTICLE 1. THE LICENSE

Licensor hereby grants to the Contractor permission to enter upon the RTD Property solely for purposes of Contractor performing work under the License. The Facilities shall be installed in the approximate orientation and location shown on Exhibit A and Exhibit B, attached and incorporated herein. The licensed location is referred to herein as the "Premises." Contractor shall comply with all terms of the License applicable to Contractor's work on the RTD Property, including but not limited to all requirements set forth in Article IV of the License. Failure to comply with the terms of the License and this Agreement may result in termination of this Agreement by RTD, effective immediately upon Contractor's receipt of notice.

ARTICLE 2. LIABILITY

A. Contractor shall be responsible for any damage, including Environmental Damages (defined in Article 5.G. below), to any property, including the Premises, the RTD Property or other RTD property, Licensee's property, Contractor's property, adjacent property,

1 Insert name of the Contractor and address.

2 Insert name of party to the License (Licensee).

3 Insert date of License.

4 Insert name of party to the License (Licensee).

5 Insert name of party to the License (Licensee).

utilities, adjacent structures, and other third-party real property that is caused by Contractor's activities. Contractor 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 Contractor shall notify one another of any such damage and any potential claims arising out of such damage. Nothing in this section shall be deemed to waive any of Licensor's privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

- B. Contractor shall indemnify, defend and hold harmless Licensor 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 Contractor's and or its subcontractors' use of the Premises or the RTD Property hereunder, including, but not limited to, Environmental Damages (defined below). It is the intention of the parties hereto that the indemnity from Contractor to Licensor provided for in this section indemnifies RTD, its officers, directors, and employees 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 damage arising out of death or bodily injury to persons or damage to property caused solely by the willful misconduct, gross negligence and/or criminal actions of RTD, its officers, directors or employees. 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 Contractor's obligations hereunder. Nothing in this section shall be deemed to waive any of Licensor's privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.
- C. The provisions of this Article 2 shall survive the termination, in whole or in part, of this Agreement.

ARTICLE 3. NO WARRANTY

- A. Licensor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Contractor or its contractors to traverse the property of any other property owners or interest-holders other than RTD is the sole responsibility of Contractor 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. This Agreement is subject to all other prior granted or reserved rights and interests in the Premises, if any, whether of record or not.
- C. Contractor specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Contractor or its contractor stores on the Premises, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

ARTICLE 4. INSURANCE

- A. Contractor shall procure and maintain, and shall require that its contractors and subcontractors procure and maintain, the following types of insurance, at 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 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. Automobile liability insurance with a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not 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
3. Workers' Compensation and Employers' Liability Insurance covering all employees of Licensee's 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's 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 Contractor's and subcontractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$ 500,000.
4. Railroad Protective Liability Insurance (only required if the construction activities allowed under this License are within 50 feet of an operational light rail or 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 include the following: (i) endorsed to include the Pollution Exclusion Amendment, (ii) endorsed to include the Limited Seepage and Pollution Endorsement, (iii) endorsed to include Evacuation Expense Coverage Endorsement. In addition, (x) no other endorsements restricting coverage may be added, (y) the original policy must be provided to Licensor prior to performing any work or services under this License, and (z) 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."
5. Prior to entry upon, above or adjacent to the RTD Property, Licensee agrees to furnish RTD with a certificate of insurance for itself, if applicable, and for each of its contractor(s)' policy(ies). Licensee shall provide 30 days' advance notice of cancellation of the policy(ies) by Registered or Certified mail.
6. Each insurance certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming RTD an additional insured;

- b) An endorsement providing for Blanket Contractual Liability coverage for liability assumed by the Licensee 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 as set forth in A.4 of this article;
 - d) A Broad Form Property Damage endorsement; and
 - e) Waiver of subrogation in favor of and acceptable to the Licensors.
7. 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.
- B. All insurance coverage provided to RTD as additional insured must be primary and noncontributory to any other coverage available to RTD.
 - 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 5. ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this "Environmental Obligations" article, the terms "Activity" and "Activities" shall include any action or omission of Contractor, and/or the subsidiaries, affiliates, agents, contractors, employees, contractors, invitees, successors or assigns of Contractor.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements (defined in Article 5.F. below), Contractor shall not cause, permit or suffer any Hazardous Material (defined Article 5.E. below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the RTD Property or any portion thereof by Contractor, its subsidiaries, affiliates, agents, employees, contractors, invitees, successors or assigns, or any other person.
- C. No Violations of Environmental Requirements. Contractor, in performing the Activities shall not cause, permit or suffer the existence or the commission by Contractor, its subsidiaries, affiliates, agents, employees, contractors, invitees, or successors or assigns, of a material violation of any Environmental Requirements upon, about or beneath the RTD Property or any portion thereof.
- D. No Environmental or Other Liens. Contractor, in performing the Activities, shall not create or suffer to exist with respect to the RTD Property, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or

other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1) or any similar state statute.

- E. For purposes of this Agreement, "Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:
1. defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), and/or the Colorado Hazardous Waste Act Sections 25-15-101 et seq., Colorado Revised Statutes and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3;
 2. characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) and/or the Colorado Hazardous Waste Act (§ 25-15-311 et seq., Colorado Revised Statutes); the Colorado Solid Waste Act (§ 30-20-100.5 et seq., C.R.S); the Colorado Water Quality Control Act (§ 25-8-101 et seq., Colorado Revised Statutes), Colorado Air Pollution Prevention and Control Act (§ 25-7-101 et seq., Colorado Revised Statutes), Title 8 Article 20.5, Colorado Revised Statutes and any federal, state or local regulations and associated guidance promulgated thereunder; or
 3. otherwise posing a present or potential risk to human health, welfare or the environment, including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.
- F. For purposes of this Agreement, "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:
1. all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and

2. all requirements pertaining to the protection of the health and safety of employees or the public.
- G. For purposes of this Agreement, "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the RTD Property or migrating or threatening to migrate to or from the RTD Property, or the existence of a violation of Environmental Requirements pertaining to the RTD Property and including without limitation:
1. damages for personal injury, or injury to property or natural resources occurring upon or off of the RTD Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Contractor;
 2. fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the RTD Property or any other property otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and
 3. liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in Article 5.G.2 herein.

ARTICLE 6. SUB-CONTRACTORS

All of the limitations and obligations imposed upon the Contractor pursuant to this Agreement shall be to apply with equal force and effect to any of Contractor's sub-contractors (together "sub-contractors") performing any work on or about the RTD Property. The Contractor shall be primarily liable and responsible to Licensor for all acts or omissions of any sub-contractor employed upon or about the RTD Property pursuant hereto. Nothing herein contained shall be construed to preclude the Licensor from proceeding or taking any legal action against the Contractor and any sub-contractor individually or collectively. Only those sub-contractors whose operations are covered by the insurance provisions hereof will be authorized to work upon RTD property. In the event that any sub-contractor does not have its own insurance coverage as set forth in Section 3, hereof, Contractor shall cause such sub-contractor to be a named insured under Contractor's policies set forth in Section. No sub-contractor shall be permitted entry upon Licensor's property until proof of sub-

Contractor's coverage required by Article IV and this section is submitted to Licensor, and approved by Licensor's Risk Manager.

ARTICLE 7. DIGGING OR BORING

Prior to performing any digging or boring activities on the RTD Property, the Contractor shall determine if a telecommunications system or other utility is buried anywhere on or about the RTD Property in the location where Contractor will perform such digging or boring activities. If there is such a telecommunications system or other utility, Contractor will determine the owner of such telecommunications system or other utility, and take such actions in cooperation with the owner(s) as are necessary so as not to damage such system or utility.

ARTICLE 8. SAMPLES/REMOVAL

As between Contractor and Licensor, Contractor shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials, including Hazardous Materials, removed from the Premises or generated as a result of activities performed pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such activities that it undertakes or is required to undertake pursuant to federal, state, and local laws and applicable industry standards. Contractor states and agrees that as between Contractor and Licensor, Contractor is the sole Generator (as the term "Generator" is used in applicable statutes and regulations concerning the removal, transport and/or disposal of Hazardous Materials, substances, waste or other contaminants of any materials, including Hazardous Materials) of any materials, including Hazardous Materials, removed from the Premises by Contractor, its subcontractors, agents or employees or generated as a result of sampling and/or testing activities undertaken by Contractor, its subcontractors, agents or employees.

ARTICLE 9. GENERAL

A. Term. This Agreement shall be effective upon the date of execution by Licensor. The permission granted herein shall expire 120 days from the date of execution of this Agreement, upon completion of the work, or termination of the License, whichever occurs first.

B. Assignment. The license granted herein may not be assigned by Contractor and Contractor, or any part thereof, or any interest therein, without the prior written consent of Licensor. No Licensor-approved assignment shall release Contractor from any liability hereunder. Any assignment in violation of this Agreement shall be null and void.

C. 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.

D. 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. This Agreement shall become effective when it shall have been executed by each party and when each party shall have received counterparts hereof, which, when taken together, bear the signatures of the

other party hereto, and thereafter shall be binding upon and inure to the benefit of the Parties hereto and their respective 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.

E. 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 Contractor expressly submits itself to the jurisdiction thereof.

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

G. No Agency. It is expressly understood and agreed that Licensor and Contractor do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

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

I. Liens. Contractor shall not permit any lien, claim or other charge to be placed on the RTD Property and Contractor 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, Contractor 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.

J. 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.

K. Legal Authority. The Contractor 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 Contractor to its terms. The person(s) executing this Agreement on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Agreement.

L. 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.

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

N. Applicable Laws; Violation. Contractor 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 Contractor violates said applicable ordinances or laws, Contractor shall cease and desist from continuing such use and upon demand by RTD.

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

P. RTD Equipment. Contractor shall not use RTD equipment, tools or furnishings located in or about Premises without prior written approval by RTD.

Q. 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
 (303) 299-6904

With a copy to: Regional Transportation District
 Attn: Manager, Engineering Services
 1560 Broadway, Suite 700
 Denver, Colorado 80202
 Phone: (303) 299-6948
 In emergency: 303-299-3480

If to Contractor: [Insert Contractor contact information]

Name of Firm

Contact

Address

City, State, Zip Code

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.

R. Entire Agreement. This Agreement represents the entire agreement between the parties hereto regarding the Premises.

Signature Pages to Follow

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

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

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT

Lori L. Graham
Associate General Counsel
Date: _____

CONTRACTOR

Name of Firm
By: _____
Name: _____
Title: _____
Date: _____