

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

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (this “**Second Amendment**”) is made and entered into as of _____, 2021 (the “**Effective Date**”) between the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado (“**RTD**”) and the **CITY OF COMMERCE CITY**, Colorado, a Colorado home rule municipality (the “**City**”). RTD and the City are each a “**Party**” and collectively, the “**Parties**.”

WHEREAS, The Parties made and entered into that certain Intergovernmental Agreement, dated March 27, 2020, as amended by a First Amendment dated February 22, 2021 (collectively, the “**Agreement**”).

WHEREAS, Section 7 of the Agreement permits amendments in writing executed by both Parties.

WHEREAS, the Parties now desire to amend the Agreement.

AMENDMENTS

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized Terms. Capitalized terms shall have the meanings set forth in the Agreement unless otherwise indicated herein or in the recitals hereto.

2. Amendment of Section 3.a. of the Agreement. Section 3.a.ii. is hereby replaced with the following:

ii. The City will provide funds not to exceed \$43,900 for the Art Pieces at NMRL stations within the City’s jurisdiction.

3. Amendment of Section 3.e. of the Agreement. Section 3.e.vi. is hereby added:

e. Art Selection and Criteria:

vi. The entire Section 3.e is subject to the following. Nothing in the Agreement or any Amendment to the Agreement shall be construed to require the City to contract with an artist. In the event the selected artist does not execute a final contract, does not fulfill the artist’s obligations under such contract, or does not create the Art Piece, neither Party will have any further obligations under the Agreement, as amended, with respect to the Art Pieces. However, the Parties may mutually agree in writing to select a different artist, and in that case, the materials, coatings and size referenced in Section 3.e.iii. may change without further amendment to this Agreement.

4. Amendment of Section 3.f. of the Agreement. Section 3.f.iv. is hereby replaced with the following:

f. Payments and Reimbursements

- iv. The City shall submit all reimbursement requests no later than July 31, 2022, unless otherwise approved by the Parties in writing, which shall not require an amendment to the Agreement. If installation of the Art Pieces is not completed by July 1, 2022, 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.

5. Amendment of Section 3.g. of the Agreement. Section 3.g. is hereby replaced with the following:

- g. As of the date of this Second Amendment, the PCS Wraps have been installed. The Parties agree that the installation of the Art Pieces will be complete by July 1, 2022; provided that if the City's selected artist cannot acquire the materials necessary to complete the Art Pieces by such date, or if either the principal artist, any of the artist's suppliers, or assistants must quarantine or recover from COVID-19 and no other supplier is available to fulfill the items needed to manufacture the Art Pieces, the City will inform RTD in writing and the installation of the Art Pieces will be completed by December 31, 2022 unless otherwise approved by the Parties in writing, which shall not require an amendment to the Agreement.

6. Addition of Paragraph 19 to the Agreement. The following provision is added to the Agreement.

19. Force Majeure. Neither Party is liable for failure to perform (except with respect to payment obligations already incurred at the time of the Force Majeure Event) solely caused by unavoidable casualty, delays in delivery of materials, embargoes, government orders, acts of civil or military authorities, acts by common carriers, emergency conditions (including weather conditions) incompatible with safety or good quality workmanship, or any similar unforeseen event that renders performance commercially implausible (each, a "**Force Majeure Event**"). If a Force Majeure Event occurs, the Party injured by the other Party's inability to perform may elect one of the following remedies: (a) to terminate this Agreement in whole or in part; or (b) to suspend the Agreement, in whole or part, for the duration of the Force Majeure Event. The Party experiencing the Force Majeure circumstances shall cooperate with and assist the injured Party in all reasonable ways to minimize the impact of the Force Majeure Event on the injured Party, which may include locating and arranging substitute services if necessary.

7. Miscellaneous

a. Counterparts and Execution. This Second Amendment may be executed in counterparts. Signatures on separate originals will constitute and be of the same effect as signatures on the same original. Electronic, digital, and faxed signatures will constitute original signatures.

b. Agreement in Full Force and Effect. Except as amended by this Second Amendment, the Agreement is in full force and effect in accordance with its terms and all other terms remained unchanged.

[SIGNATURE PAGE[S] FOLLOW]

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

CITY OF COMMERCE CITY

Benjamin A. Huseman, Mayor

ATTEST:

Dylan Gibson, 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: _____