

Intergovernmental Agreement Between CDOT and City of Commerce City Pertaining to Over-Height Warning Device on York Street in Commerce City

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____, 201____ (“**Effective Date**”), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality (“**City**”), and the STATE OF COLORADO, acting by and through the Department of Transportation through its ITS Branch (“**CDOT**”);

WHEREAS, pursuant to Art. XIV, § 18(2)(a) of the Colorado Constitution, the City and CDOT may cooperate or contract with each other to provide any function or service lawfully authorized to each; and

WHEREAS, CDOT desires to install and maintain warning devices for over-height vehicles on York Street for the safety of the traveling public and the preservation of infrastructure, including one device within the boundaries and public right-of-way of the City;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The City grants to CDOT, as well as its successors and assigns, a revocable license (“**License**”) for the non-exclusive right to enter, re-enter, occupy and use the City’s right-of-way as depicted in **Exhibit A** (“**Property**”), which exhibit is attached and incorporated into this Agreement, to install one ITS Blank Out sign and related improvements and equipment (“**Device**”) in the location depicted in Exhibit A, subject to the conditions contained in this Agreement. CDOT, its employees, agents, contractors or representatives shall have the right to enter on the Property to construct, repair, remove, replace, reconstruct, inspect, improve, and maintain the Device. Before commencing any construction on the Property, CDOT, its employees, agents, contractors or representatives shall obtain all necessary permits and approvals required by the Commerce City Revised Municipal Code.

2. CDOT shall install and maintain the Device in good condition and in accordance with the Commerce City Revised Municipal Code and the Manual on Uniform Traffic Control Devices, 2009 Edition with Revisions 1 and 2 incorporated. The City shall not be responsible for any cost relating to the Device.

3. CDOT shall restore the Property as affected by the installation of the Device to its previous condition, or as close as possible to its previous condition, except as necessarily modified to accommodate the Device, and shall repair damages caused on the Property or adjoining lands arising out of the construction or reconstruction, maintenance and repair of the Device when caused

by the exercise of the rights or obligations of CDOT under this Agreement. If such damages are not restored by CDOT, CDOT shall pay the City for such damages.

4. CDOT shall pay or cause to be paid all costs for work done by or on behalf of CDOT or any of its designees, contractors, or assigns occupying or doing work on or adjacent to the Property. CDOT shall keep the Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of CDOT.

5. CDOT shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at CDOT's sole cost and expense.

6. CDOT shall cause all contractors and subcontractors performing work on or about the Property to take all necessary safety measures with respect to the construction and maintenance activities. Before commencing any work in the Property, CDOT will secure and maintain, or will require its contractors to secure and maintain, general liability insurance sufficient to cover any liability for its actions on the Property and its use of the License. Each insurance policy provided pursuant to this paragraph shall name the City as an additional insured on any such insurance policies.

7. CDOT shall be liable and responsible for any and all damages to persons or property caused by or arising from the actions or omissions of CDOT, its employees, agents, contractors, or representatives, in the exercise of CDOT's rights under this Agreement.

8. The City retains the right to the undisturbed full use and occupancy of the Property insofar as such use and occupancy is consistent with and does not impair CDOT's use of the License except as authorized by this Agreement. The City reserves the right to grant easements and additional licenses within the Property and to perform any acts it deems necessary within the Property so long as such acts are not inconsistent with and does not unreasonably interfere with this License or CDOT's use of the Property, subject to the terms of this Agreement. The City may install temporary or removable and replaceable objects such as lights, mailboxes, signs, fences, shrubs, plants, and flowers on the Property.

9. If any future project requires relocation of the Device, it shall be the responsibility of that project to relocate the Device, if feasible, as part of that project and return the Device to the condition and function that was present before such work commenced. If the Device cannot be feasibly relocated and reconditioned, the project will return any salvageable materials to CDOT within ninety (90) days.

10. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written

agreement of the Parties. No subsequent novation, renewal, addition or deletion or other amendment hereto shall have any force or effect unless it is in writing and signed by both Parties.

11. If both parties agree to the termination of this License, CDOT shall remove the Device within ninety (90) days of the date of termination or relocate it to the CDOT right-of-way. Otherwise, the License and this Agreement will terminate upon six (6) consecutive months of disrepair or inactivity of the Device which is not corrected by CDOT or, notwithstanding section 9, by the City's provision of written notice by first class mail terminating the License and this Agreement at any time to CDOT's ITS Office. Upon termination of this License and Agreement by the City, the City shall either relocate the Device to a location within the CDOT right-of-way or, if not feasible, remove the Device and return any salvageable materials to CDOT within ninety (90) days of the date of termination.

12. The License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Property, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the City with respect to the License or the Property. The City makes no warranty with respect to ownership of or possession of any interest in the Property.

13. Any remedy set forth herein for breach of this Agreement or the License shall be in addition to any other remedy available to the City in law or in equity.

14. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

15. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

16. This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed by this Agreement. Any oral representations or modifications concerning this Agreement or its subject matter shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

17. The term of this Agreement shall be from the date of full execution by the Executive Director of Colorado Department of Transportation, or his designee, for a period of five (5) years. However, if the Parties so desire, the term may be extended for a subsequent time period by written amendment to this Agreement.

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THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

LEGAL REVIEW

Cynthia Coffman, Attorney General

By: _____

Signature –Senior Assistant Attorney General

Date: _____

By _____ Date: _____

MICHAEL P. LEWIS, EXECUTIVE DIRECTOR

DEPARTMENT OF TRANSPORTATION

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk

APPROVED AS TO FORM:

Robert D. Sheesley, City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 201____, by Sean Ford, Mayor of the City of Commerce City.

Notary Public

My commission expires: _____