

## **AMENDED AND RESTATED RIGHT-OF-WAY EASEMENT**

The City of Aspen, a home rule municipality of the County of Pitkin, State of Colorado, with its principal office located at 130 S. Galena St., Aspen, Colorado 81611, here referred to as Grantor, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, including the agreements contained in this instrument and that certain Memorandum of Understanding between Grantor, Grantee and the Federal Highway Administration dated July 27, 1998, grants to the State of Colorado, Department of Transportation, whose legal address is 4201 East Arkansas Avenue, Denver, Colorado 80222 of the City and County of Denver, Colorado, here referred to as Grantee, a right-of-way easement to construct, operate and maintain a two lane parkway and a corridor for a light rail transit system (to be constructed when the financing is available), and a two lane-parkway and, in addition, two exclusive bus lanes between Buttermilk and the Maroon Creek Roundabout pursuant to the May 2007 City of Aspen ballot question, but for no other purpose or purposes, portions of Grantor's property described in Exhibit 1 appended hereto and incorporated herein as if fully set forth (the "Right-of-Way"). This grant is made on the following terms and conditions:

1. The light rail transit system shall be built only after adequate financing mechanisms and final design details are identified and approved by public vote of the citizens of the Grantor.

2. A two lane-parkway and two exclusive bus lanes between Buttermilk and the Maroon Creek Roundabout pursuant to the May 2007 City of Aspen ballot question; and, in addition, a two lane parkway and corridor for a light rail transit system shall be constructed in full compliance with all provisions relating to the construction of a two lane parkway and light rail transit system of that certain State Highway 82 Entrance to Aspen Record of Decision, Project STA 082A-008, issued by the Colorado Department of Transportation and Federal Highway Administration in August 1998, and that certain Memorandum of Understanding between Grantor, Grantee, and the Federal Highway Administration dated July 27, 1998, including, but not limited to, all environmental and historic mitigation measures identified therein. The platform width and maximum total right-of-way width for each corridor section of the two lane parkway and corridor for a light rail transit system; or, a two lane-parkway and two exclusive bus lanes between Buttermilk and the Maroon Creek Roundabout pursuant to the May 2007 City of Aspen ballot question shall be no greater than as described in Table 1 on page 2 of the Record of Decision.

3. The use of the Right-of-Way shall be contingent upon environmental and historic resource mitigation measures including, but not limited to:

a. A cut and cover tunnel of no less than 400 feet to return public open space approximately 2 acres or more of Marolt open space.

- b. The return to open space of the portion of State highway 82 between Cemetery Lane and the Maroon Creek intersection to be abandoned by CDOT.
- c. The acquisition of other deed restricted open space of equal value and equal or greater acreage to replace any net loss in open space.
- d. An alignment of the two-lane parkway and corridor for a light rail transit system that is designed to be as sensitive as possible to the location of the historic Holden Smelting and Milling Complex and Museum.
- e. The total use of open space shall be the minimum possible, consistent with good design.
- f. The design of the proposed bridge shall be sensitive to the environment and community character.
- g. A landscaping plan to include plantings, berms and depressions, and other methods to mitigate environmental and neighborhood concerns along the entire two-lane parkway and corridor for a light rail transit system.

4. Before the start of any construction on any part of the Right-of-Way referenced herein, Grantor shall have reviewed and approved all landscaping plans, final highway, bridge and light rail corridor designs, and final bid packages applicable thereto, and all plans developed to ensure compliance with the above referenced Memorandum of Understanding, the Record of Decision, and the environmental and historic resource mitigation requirements set forth at paragraph 3 above.

5. Before Grantee commences any ground disturbing activity on any portion of the Right-of-Way referenced herein necessary for preliminary engineering or design work, Grantor shall have reviewed and approved all such proposed activity to ensure that the proposed disturbance is the minimum reasonably necessary and if construction is not commenced within one year, Grantee shall re-vegetate and landscape immediately after the completion of such activity.

In witness whereof, Grantor, by its duly authorized representatives, has executed this instrument on the date set opposite his or her signature below.

City of Aspen, a Home Rule Municipality

Date: \_\_\_\_\_

By: \_\_\_\_\_

Stephen H. Barwick,  
City Manager of the City of Aspen

State of Colorado     )  
                                  ) ss.  
County of Pitkin     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Stephen H. Barwick, City Manager of the City of Aspen.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public