



TO: HPTE BOARD OF DIRECTORS; CDOT TRANSPORTATION COMMISSION
DATE: JANUARY 18, 2018
FROM: DAVID SPECTOR, HPTE DIRECTOR; KATHY YOUNG, FIRST ASSISTANT ATTORNEY GENERAL
SUBJECT: REQUEST FOR PROPOSALS FOR NETWORK BASED REVENUE GENERATING OPPORTUNITES ON CDOT PROPERTIES

Purpose: Seek HPTE Board action to approve, and TC acknowledgment of, the Program Agreement with Branded Cities as part of the Request for Proposals for Network Based Revenue Generating Opportunities on CDOT Owned Properties process.

Action: HPTE Board: Authorize HPTE staff to execute the Program Agreement in substantially the form attached.

TC: Authorize CDOT staff to acknowledge the terms of the Program Agreement and authorize CDOT staff to enter into lease agreement(s) with HPTE for the purposes described therein.

Background: In July 2015, HPTE issued a Request for Information for Revenue and Other Value Generating Opportunities. HPTE received nine submittals, including a submittal from Branded Cities Network, LLC (Branded Cities), for a digital communications network. HPTE briefed the HPTE Board on these alternative revenue generating opportunities at the April 19, 2016, Board meeting.

Following the meeting, in consultation with the Colorado Attorney General's office and in accordance with the HPTE Project Proposal Guidelines for the receipt of unsolicited proposals, HPTE issued a Request for Proposals for Network Based Revenue Generating Opportunities on CDOT Owned Properties (RFP). In response to the RFP, HPTE received one proposal, from a consortium of Branded Cities, Outfront Media, LLC, and Panasonic Corporation North America (Consortium). The Consortium proposes to "build a state-of-the-art digital communications sign network (DCSN) on CDOT-owned properties throughout the State of Colorado." The Executive Summary of the Consortium's proposal is attached for review.

Following discussion of the proposal in October 2016, the HPTE Board of Directors recommended a cautious approach moving forward, with a direction to focus on size and placement of the DCSN, driver safety and distraction, community impacts, visual intrusion, local zoning and permitting regulations, and potential for revenue generation. Since this time, HPTE, CDOT and the Colorado Attorney General's office have been in discussions regarding how the DCSN program could be structured to achieve these goals.

Staff have agreed on a draft form of program agreement between HPTE and the Consortium that would govern the DCSN program. On August 2, 2017, representatives of HPTE and the Attorney General's Office met with representatives of FHWA to discuss the Consortium's proposal. FHWA confirmed at this meeting that highway or interstate right-of-way cannot have commercial advertising devices placed in the right-of-way. However, outdoor advertising devices may be able to be placed on CDOT property that lies outside of right-of-way depending on the following:

- o All federal and state highway beautification/outdoor advertising laws must be followed;
- o CDOT must own the property;
- o An analysis must be done to determine how the specific piece of property was acquired and paid for - if federal funds were used, CDOT will have to reimburse these federal funds to FHWA before the property can include commercial advertising;

- o Federal regulations governing environmental impacts and related procedures, including NEPA, 23 CFR Part 771, may have to be complied with for each site before a digital billboard will be allowed on that site.

In September 2017, Staff and the Consortium presented to the HPTE Board and TC at a workshop, including an overview of the history, the proposal, and a draft of the Program Agreement. Since that time, Staff and the attorney general's office have continued to negotiate certain substantive issues with the consortium. In addition, certain Board members and Commissioners have met individually with the Consortium to learn more.

Digital Communications Network Proposal: The Consortium proposes to install, construct and operate, at no external cost to HPTE or CDOT, a cloud-based network of digital billboards that could be used by the State to provide safety, public service, news, event, weather, traffic conditions and emergency messaging to Colorado residents and visitors. In exchange, the Consortium would be entitled to place advertising on the DCSN. A percentage share of the gross revenues generated by the advertising would be shared with HPTE.

Under the terms of the draft program agreement, the Consortium would have the exclusive right for twenty years to identify potential sites, located on CDOT property, which is not in right-of-way or can be taken off of right-of-way, to place a sign structure. CDOT would lease the site (generally no more than a four-foot diameter parcel) to HPTE for fair market value. HPTE would then sublease the site to the Consortium for fair market value. If the site is legally permissible under all existing federal, state and local laws and regulations, the Consortium would then install and operate a digital sign. The Consortium would, at its own cost, design, construct, install and operate the sign as part of the DCSN. HPTE, in connection with its state partners, would provide messaging that would be displayed on each sign on the DCSN for no less than three minutes every hour (on average). The State messaging could be programmed to run at days and times of the state's choosing. In addition, state emergency messages would be entitled to be displayed as necessary by the state.

In addition, HPTE would receive 40% of the gross advertising revenues received by the Consortium. This revenue share would be paid annually (following the Consortium's repayment of its capitalized costs, which are straight-line amortized over a seven-year period). Initial revenue estimates by the Consortium indicate that HPTE would receive between \$2 million and \$8 million annually in years 1-10, based on an assumption of 60 sign faces (approximately 30 sites). If there are 30 faces (approx. 15 sites), the revenue estimate would be between \$2 million and \$4 million annually in years 1-10. If there are only 20 faces (approx. 10 sites), the revenue estimate would be between approximately \$1 and \$2.5 million annually in years 1-10. Any revenues earned by HPTE would be used to first repay TC loans, and second to offset CDOT fee for service payments to HPTE, thereby annually saving CDOT the same amount as the annual DCSN revenue received by HPTE.

Staff and the Attorney General's office feel that adequate protections have been built into the draft program agreement. HPTE and CDOT have the ability to reject any proposed site, even if the site is otherwise legally permissible. HPTE has the right to cancel the program agreement at its convenience anytime following year six of the contract following repayment of capitalized costs. HPTE and CDOT receive indemnification from the Consortium. Other than internal staff time to review site applications, and to program, plan or facilitate state messages, the Consortium bears all costs under the program agreement.

Placing the DCSN and advertising on eligible CDOT property would be a new program, and the TC would need to approve use of CDOT property for these purposes.

The draft form of program agreement is attached for review and approval by the HPTE Board and acknowledgement by the TC.

Options/Decision Matrix

- 1) Staff recommendation to HPTE Board: Authorize approval of Program Agreement.
Staff Recommendation to TC: Authorize staff to acknowledge Program Agreement and to enter into lease agreements with HPTE for these limited purposes.

- 2) Do not authorize approval or acknowledgment of the Program Agreement or use of CDOT property for these purposes. Direct HPTE staff to cancel the procurement and solicitation.

Recommendation: Staff recommends that the HPTE Board to authorize approval of, and TC authorize CDOT to acknowledge the Program Agreement. Staff recommends TC to authorize the lease of CDOT property to HPTE for these limited purposes.

Next Steps: Staff will work with the Consortium to begin to identify properties and locations for the DSCN, as described in the Program Agreement.

Attachments

Attachment A: Program Agreement
Attachment B: FAQ
Attachment C: Resolution

COORDINATED DIGITAL SIGN PROGRAM AGREEMENT

BETWEEN

**THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE,
a government owned business and a division of the Colorado Department of Transportation,
as the “HPTE”**

AND

**OUTFRONT/BRANDED CITIES COLORADO, LLC,
a Delaware limited liability company,
as “Contractor”**

COORDINATED DIGITAL SIGN PROGRAM AGREEMENT

THIS COORDINATED DIGITAL SIGN PROGRAM AGREEMENT (this “**Agreement**”) is made this ___ day of _____, 2017 (the “**Effective Date**”), by and between **THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**, a government owned business and a division of the Colorado Department of Transportation (“**HPTE**”), and **OUTFRONT/BRANDED CITIES COLORADO, LLC**, a Delaware limited liability company (“**Contractor**”), as acknowledged by the **COLORADO DEPARTMENT OF TRANSPORTATION** (“**CDOT**”).

RECITALS

WHEREAS, CDOT possesses rights, title, and interest in and to various vacant, partially developed, and fully developed real properties throughout the State of Colorado (as may be updated from time to time in connection with any dispositions or acquisitions, each a “**Property**” and collectively, the “**Properties**”);

WHEREAS, HPTE issued a request for information (the “**RFI**”) and a subsequent request for proposals (the “**RFP**”) to explore and evaluate revenue generating opportunities on CDOT Properties through the creation of a digital communications network on the Properties;

WHEREAS, Contractor responded to both the RFI and the RFP, proposing the installation and operation of a digital communications network on the Properties;

WHEREAS, Contractor was awarded such opportunity by HPTE;

WHEREAS, HPTE has negotiated with Contractor with respect to the design, manufacturing, assembly, engineering, procurement, installation, construction, programming, marketing, maintenance, operation, removal and dismantlement of a coordinated state-wide digital sign program and network, including public service messaging and emergency communications services (the “**Digital Sign Network**”), at no cost to HPTE, in exchange for Contractor placing advertising on and sharing in certain revenues from such Digital Sign Network, in accordance with this Agreement and all other applicable Laws;

WHEREAS, Contractor, in consideration of such advertising rights and sharing in revenues, has agreed to be responsible for the design, manufacturing, assembly, engineering, procurement, installation, construction, programming, marketing, maintenance, operation, removal and dismantlement of the Digital Sign Network and the fixtures and equipment appurtenant thereto, which may be installed at some or all of the Properties, which specific locations shall be mutually agreed upon by CDOT, HPTE and Contractor as provided herein (collectively, the “**Digital Sign Sites**”, as more particularly defined below), and at no cost to HPTE because Contractor is solely responsible for the Capitalized Costs in connection with the Digital Signs Network;

WHEREAS, if CDOT determines, in its sole discretion, that it has land available to lease, it shall enter into a separate lease with HPTE (each, a “**Lease**”, the form of which is attached

hereto as Exhibit 1A), and HPTE will sublease the Digital Sign Sites to Contractor pursuant to separate written sublease agreements, the form of which is attached hereto as Exhibit 1B;

WHEREAS, Contractor will pay to HPTE a percentage of the “Gross Revenues” in accordance with the terms set forth in Section 6.1 of this Agreement;

WHEREAS, Contractor represents that it has, or its Subcontractors have, the professional experience and expertise to design, manufacture, assemble, engineer, procure, install, construct, program, market, maintain, operate, remove and dismantle the Digital Sign Network and the fixtures and equipment appurtenant thereto, to transmit the State Public Service Messages and emergency communications, and to successfully place advertising on such Digital Sign Network, and further warrants that it is ready, willing and able to perform its other obligations in accordance with the terms and conditions as set forth in this Agreement; and

WHEREAS, HPTE and Contractor desire to enter into this Agreement to implement the foregoing on the terms and conditions contained herein; and

WHEREAS, CDOT, the HPTE Board of Directors and the Colorado Transportation Commission have reviewed this Agreement and have found this Agreement to be in the best interest of the State and have acknowledged that HPTE is a government-owned enterprise and has the authority to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects and these innovative means include entering into public-private partnerships on certain Properties.

NOW, THEREFORE, HPTE and Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE 1 INCORPORATION OF RECITALS

The Recitals, Representations and Warranties above are hereby incorporated by this reference as if fully set forth herein. In the event of any conflict between such Recitals and the other terms and conditions of this Agreement, such other terms and conditions shall control.

ARTICLE 2 DEFINITIONS

2.1 Definitions.

The following words and phrases have the following meanings for purposes of this Agreement:

“**Ad Panel**” means a digital advertising display face located on a Digital Sign on which Contractor shall place rotating digital advertisements in accordance with the terms of this Agreement.

“Affiliates” means any individual, corporation, limited liability company, partnership, trustee, administrator, executor other legal entity that directly or indirectly owns, or controls, or is owned or controlled by, or is under common ownership or control with Contractor. Affiliate shall not include any legal entity in which Contractor, or any of its Affiliates, holds only a minority interest without a right of control.

“Agreement” means this Coordinated Digital Sign Program Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

“Approved Transferee” means a third party that (i) acquires all or substantially all of Contractor's interest in and to the Digital Signs in a bona fide, arms-length transaction, (ii) possesses adequate experience in the outdoor advertising industry to perform Contractor's duties and obligations under this Agreement, (iii) based on annual gross revenues from sign faces owned or operated by such company, is one of the ten (10) largest outdoor advertising companies or media companies in the country; (iv) prior to transfer provides to HPTE and/or CDOT a replacement Performance and Payment Bond as required under this Agreement and (v) assumes such duties and obligations, in writing, pursuant to an assignment and assumption agreement, the form and substance of which are reasonably satisfactory to HPTE. Any lender providing Permitted Lender Financing shall also be deemed an Approved Transferee. Furthermore, no person or entity (other than a lender providing Permitted Lender Financing) shall be deemed an Approved Transferee prior to January 1, 2021.

“Capitalized Costs” means, as to each Digital Sign and the fixtures and equipment appurtenant thereto, the costs for which, as between HPTE and Contractor, Contractor is solely responsible and are directly and specifically attributable to (a) the design, manufacturing, engineering, assembling, procurement, erection, installation, construction, removal and dismantlement of the sub-surface foundation, steel columns and structural supports, scaffolding and additional infrastructure necessary to support such Digital Sign and the fixtures and equipment appurtenant thereto, (b) the design, manufacturing, engineering, assembling, procurement, erection, installation, construction, removal and dismantlement of the Ad Panel sign face attached to the Digital Sign, including, without limitation, the LED lights included in such sign face, the internal mechanical, electrical and digital technology and components, and the design, software, programming and digital technology necessary to such sign's operation, together with Contractor's nameplate under Section 4.1 of this Agreement, (c) the refurbishment(s), modification, maintenance, repair, and upgrade or replacement (as applicable) of such Digital Sign, Ad Panels and the fixtures and equipment appurtenant thereto, as required pursuant to Section 3.17 and Exhibit 1C of this Agreement, and (d) the pursuit and obtaining all of the Permits (as defined below), including, without limitation, all legal, lobbying, and legislative efforts in connection therewith, which costs under (a) through (d) must, under GAAP, be accounted for as capital costs, and not as expenses. In determining such costs, Contractor shall elect, when permissible, to expense rather than to capitalize costs. Contractor shall certify to HPTE as to the Capitalized Costs as to each Digital Sign reasonably promptly after installation of such Digital Sign. No such Capitalized Costs shall be included in any calculation of Percentage Rent until such certification has been made and delivered to HPTE. In no event shall the

Capitalized Costs for the up to sixty (60) sign face Digital Signs Network exceed \$9 Million and No/100 Dollars for the initial capital investment and more than \$9 Million for each refurbishment cycle. Notwithstanding anything contained in this Agreement to the contrary, the aggregate Capitalized Costs for the Digital Signs which are incurred by Contractor under this Agreement are subject to recovery by Contractor in accordance with Section 6.1 of this Agreement and the other terms and conditions hereof. Subject to the foregoing, a portion of the design, software, programming and other costs not directly and specifically attributable to a single Digital Sign, but directly and specifically attributable to the Digital Sign Network as a whole, shall be ratably allocated to a Digital Sign for purposes of such Capitalized Cost certifications. For illustrative purposes only, if there are One Million Two Hundred Thousand Dollars (\$1,200,000) of such costs attributable to the Digital Network as a whole, and sixty (60) sign faces, then Twenty Thousand Dollars (\$20,000) of such system-wide costs shall allocated to each Digital Sign for purposes of Contractor's cost certification for each such Digital Sign.

“Change in Law” shall mean and refer to the enactment, amendment, modification, repeal, decision, order or ruling by a Governmental Authority after the date of this Agreement of any Law which is applicable to the performance of the Work; it being expressly understood and agreed by the parties hereto that a change in any income tax Law or any Law by which a tax is levied or assessed on the basis of or in connection with the Digital Signs and/or Contractor’s income, profits, revenues or gross receipts shall not be a Change in Law unless Contractor would be entitled to an abatement of Percentage Rent in relation to such change in Law, as specifically described in this Agreement.

“Commencement Date” has the meaning given such term in Section 5.1.

“Cure Notice” has the meaning given such term in Section 12.2.

“Default” has the meaning given such term in Section 12.1.

“Default Rate” shall mean (a) the lower of ten percent (10%) per annum, or (b) the six-month United States Treasury Bill rate, plus six (6%), but in no event an interest rate higher than the highest rate permitted by law.

“Deliverables” has the meaning given such term in Section 3.8(a).

“Digital Sign” means a digital sign that meets the Minimum Design Specifications set forth in Exhibit 1E and which is developed and operated in accordance with the terms of this Agreement and other applicable Laws together with all signs, structures, appurtenances and related equipment. Even if not required to “go dark” under applicable Laws, a Digital Sign shall not operate between the hours of 12:00 a.m. and 5:00 a.m., unless HPTE consents otherwise, and excluding the communication of State Emergency Messages. The Digital Sign Network shall be comprised of up to 60 sign faces on the Digital Signs.

“Digital Sign Network” has the meaning given such term in the Recitals.

“Digital Sign Sites” means the specific locations on the Properties as shall be proposed by Contractor and approved by HPTE in which Contractor shall install and operate either a single face, a two-faced, or a three-faced Digital Sign, so as to initially establish a Digital Signs Network.

“Director” means the Director of HPTE, and any representative duly authorized in writing to act on its behalf.

“Effective Date has the meaning given such term in the introductory paragraph of this Agreement.

“Environmental Laws” shall mean collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including OSHA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“Excusable Event” has the meaning given such term in Section 12.4(d).

“GAAP” means generally accepted accounting principles, consistently applied, as applicable from time to time.

“Governmental Authority” means any United States national, federal, state (including, without limitation, HPTE), county, municipal or local government agency, authority or court, or any department, board, bureau or instrumentality thereof.

“Gross Revenues” has the meaning given such term in Section 6.1.

“Hazardous Materials” shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance or any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive waste or any other similar materials which are included

under or regulated by any Environmental Law.

“**Indemnitees**” has the meaning given such term in Section 9.1(b).

“**Initial Term**” has the meaning given such term in Section 5.1.

“**Installation Deadline**” has the meaning given such term in Section 5.2(a).

“**Installation Schedule**” means the schedule for the installation of the Digital Signs, attached hereto as Exhibit 1D.

“**Key Personnel**” has the meaning given such term in Section 3.12(b).

“**Law**” means any constitution, charter, statute, act, law, regulation, code, rule, order, ordinance, decree, permit, judgment, directive, ruling, decision, resolution, executive order or declaration of any Governmental Authority, or any interpretation or application thereof by any such Governmental Authority, including, without limitation, applicable state and federal outdoor advertising and highway beautification regulations and laws, Environmental Laws and laws applicable to the regulation of Hazardous Materials.

“**Legal Challenge**” has the meaning given such term in Section 9.1(c).

“**Losses**” has the meaning given such term in Section 9.1(b).

“**Minimum Design Specifications**” means the minimum design specifications applicable to the Digital Signs specified on Exhibit 1E to this Agreement.

“**Monthly Payment Date**” shall mean the 15th day of each month during the Term of this Agreement (and, after the Term of this Agreement until all amounts earned during such Term from advertising on Ad Panels have been received).

“**OAAA**” means the Outdoor Advertising Association of America, Inc., the primary trade association for the outdoor advertising industry.

“**OSHA**” means the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), and the regulations and rulings promulgated pursuant thereto.

“**Performance and Payment Bond**” has the meaning given such term in Section 3.16(a).

“**Percentage Rent**” has the meaning given such term in Section 6.1.

“**Permits**” has the meaning given such term in Section 3.6.

“**Permitted Lender Financing**” has the meaning given such term in Section 3.4. The financing and security documents for such Permitted Lender Financing shall be subject to the reasonable review and approval of HPTE to confirm that such documents are consistent with the

requirements of Section 3.14(a)(i), such approval not to be unreasonably withheld, conditioned, or delayed. Such review and approval may include a requirement that the lender providing such financing enter into an attornment agreement, non-disturbance agreement, recognition agreement or similar lender/HPTE agreement, the purpose of which is to assure that if the lender exercise its rights under its financing and security documents, the Digital Sign Network shall at all times continue to operate in accordance with the terms of this Agreement and the lender shall reasonably cooperate with HPTE to assure such continued operation.

“Permitted Transfer” has the meaning given such term in Section 12.1(d)(vii).

“Phase I” means Phase I of the Installation Schedule for the Digital Sign Sites identified in Exhibit 1D attached hereto.

“Phase II” means Phase II of the Installation Schedule for the Digital Sign Sites identified in Exhibit 1D attached hereto.

“Plans and Specifications” has the meaning given such term in Section 4.2.

“Project Manager” means the project manager designated by HPTE from time to time as its project manager for the Digital Sign Network implemented pursuant to this Agreement.

“Properties” has the meaning given such term in the Recitals.

“Required Governmental Approvals” shall mean, as to each Digital Sign, the applicable CDOT, HPTE, and FHWA approvals, together with all required approvals (if any) from other governmental entities with jurisdiction over the underlying real property.

“Revenue Reports” has the meaning given in Section 3.8(c).

“RFI” has the meaning given such term in the Recitals.

“RFP” has the meaning given such term in the Recitals.

“State Emergency Messages” means state-wide and/or regional emergency messages that may include, but shall not be limited to, “Amber Alerts”, messages issued by the Federal Emergency Management Agency, evacuation notices, homeland security, severe weather, fire, flash flood and/or public safety messages. Routine traffic alerts or notices shall not constitute State Emergency Messages for purposes of this Agreement.

“State Messages” means either a State Emergency Message or a State Public Service Message, or both, as the context may require.

“State Public Service Message” means the following advertising copy provided by HPTE to Contractor for display on the Digital Signs: (i) public service announcements, (ii) notices of traffic conditions and parking conditions within the State of Colorado, (iii) general public safety messaging, in coordination with the Department of Homeland Security, Federal

Bureau of Investigations, the local law enforcement, fire departments, and other first responders provided by HPTE.

“**Status Report**” has the meaning given such term in Section 3.8(b).

“**Sublease**” means a sublease entered into between HPTE to Contractor, concurrent or subsequent to a Lease being entered into between CDOT and HPTE, for the erecting, constructing, installing, placing, operating, maintaining, modifying, servicing, relocating and removing of the Digital Signs on the Digital Sign Sites, including supporting structures, illumination facilities and connections, back-up panels, service ladders and other appurtenances and ancillary equipment.

“**Subcontractor**” means any person or entity who has a contract, agreement or other arrangement with Contractor to perform a portion of the Work or to supply materials, equipment or other items in relation to the Work and, when required under applicable Laws, includes subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with Contractor, who perform such Work or supply such items.

“**Term**” has the meaning given such term in Section 5.1.

“**Work**” means, collectively, the design (including architectural and engineering services), manufacture, assembly, procurement, installation, maintenance, operation, programming, connecting to existing or future Colorado state information and communication networks, posting of State Messages, procuring of advertisers, sale of ads, cooperation with media buyers and brokers, removal and dismantlement of the Digital Signs, maintenance and restoration of the underlying and other property affected by the Work and other services and items that are necessary to execute and complete the obligations of Contractor described in this Agreement and shall include, without limitation, all such services and items which are specifically required by this Agreement and any and all work necessary to complete or carry out the work fully and to the standard of performance required in this Agreement.

2.2 **Interpretation.**

(a) The term “**include**” (in all its forms) means “include, without limitation” unless the context clearly states otherwise.

(b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated, are to the Articles, Sections or Exhibits of this Agreement.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

(f) All references to a number of days mean calendar days, unless expressly indicated otherwise.

2.3 **Incorporation of Exhibits.**

The Exhibits attached hereto are incorporated herein and made a part of this Agreement.

ARTICLE 3 GENERAL CONDITIONS FOR PERFORMANCE OF WORK

3.1 **Intent of Agreement.** The intent of this Agreement is that, in consideration of HPTE's grant of certain rights to Contractor to sell and place advertising on Digital Signs, Contractor will: (a) have the right and the obligation to design, manufacture, assemble, install, maintain, operate, program, remove (the above-grade portions of the Digital Signs) and dismantle the Digital Signs and the fixtures and equipment appurtenant thereto, (b) pay to HPTE the Percentage Rent during the Term of this Agreement, and (c) program and operate the Digital Signs as a coordinated Digital Sign Network. Further, Contractor must take all action reasonably necessary to perform its obligations pursuant to this Agreement. In consideration of the foregoing, Contractor shall be entitled to place advertising on the Digital Signs and receive the payments payable to Contractor pursuant to Section 6.1, or as otherwise expressly provided for in this Agreement.

3.2 **Qualified Personnel.** Contractor must ensure that all Work that requires the exercise of professional skills or judgment is accomplished by professionals qualified and competent in the applicable disciplines and appropriately licensed, as required by Law. Contractor upon reasonable notice must provide copies of any such licenses to HPTE. Contractor remains responsible for the professional and technical accuracy of all Work and Deliverables (as defined below) performed or furnished, whether performed or furnished by Contractor or its Subcontractors or others on its behalf. Contractor shall at all times employ or retain sufficient personnel to install and operate the Digital Sign and sell advertising thereon and reasonably cooperate with HPTE in operating the Digital Sign Network in order to display the State Messages pursuant to this Agreement.

3.3 **HPTE Review.** Any review, supervision, consent, approval or acceptance in relation to any of the Work by HPTE does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Work and Deliverables. This provision in no way limits HPTE's rights against Contractor either under this Agreement, at law or in equity.

3.4 **Contractor to Pay for All Items of Work.** Contractor acknowledges and agrees that it must perform all Work and pay all amounts due and payable related to the operation of the Digital Signs and Digital Sign Network and the fixtures and equipment appurtenant thereto (including, without limitation, advertising commissions) without any payments by HPTE, and that Contractor's sole source of payments under this Agreement is from the Gross Revenues pursuant to Section 6.1 and the other terms and conditions hereof. In furtherance and confirmation of the

foregoing, Contractor acknowledges and agrees that HPTE has not made, and does not intend to make, any appropriations in relation to this Agreement. Contractor further covenants and agrees that it must provide and pay for all items or services reasonably necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, all design, manufacturing, assembly, engineering, procurement, installation, construction, programming, marketing, maintenance, operation, removal and dismantlement services, all administration, management, training and coordination services, all information technology, software design, programming and connectivity requirements, all labor, materials, furnishings, equipment, supplies, insurance, bonds, permits, licenses, tests, inspections, tools, machinery, water, heat, utilities consumed in performance of the installation, maintenance, operation and removal of the Digital Signs and restoration relating thereto and transportation, and all other items, facilities and services, including off-site office space, maintenance vehicles, warehouse space, computers, digital network equipment and other ancillary operational facilities, equipment and services related to Contractor's performance of its obligations under this Agreement.

Contractor covenants that it shall not record any instrument purporting to establish any lien or claim of lien against a Digital Sign and shall promptly cause any of its Subcontractors that records an instrument purporting to establish any such lien to promptly record a release of such lien. Notwithstanding the foregoing, Contractor shall have the right to grant a chattel mortgage, to consent to the grant of a security interest in and the filing of a financing statement, and to otherwise execute security documents in favor of a lender providing financing with respect to the Digital Signs (such financing, "**Permitted Lender Financing**"); provided, however, that in all instances such encumbrance shall attach solely to Contractor's property interest in the Digital Sign and shall in no instance attach to the Digital Sign Sites or any public property.

3.5 Site and Local Physical Conditions. Subject to the provisions of this Section 3.5, Contractor will bear the full risk of site and local physical conditions at locations where the Work shall be performed and Contractor will not be entitled to an adjust payments under Section 6.1 or any extension in time for its performance of the Work as a result of the same, unless such conditions constitute an Excusable Event. Contractor acknowledges and agrees that it will bear the full risk of installing the Digital Signs and the fixtures and equipment appurtenant thereto.

During the course of installing a Digital Sign and the fixtures and equipment appurtenant thereto, Contractor shall lawfully dispose of any soil or spoils removed in connection with the subsurface foundation work. Apart from the lawful disposal of such removed soils or spoils, which shall be at Contractor's sole cost and expense (but which, if a capital expense under GAAP, may be included in the Capitalized Costs), Contractor shall have no duty to remediate such site. However, if remediation is required, CDOT, as owner of the Property, in its sole discretion can determine if and how CDOT will remediate the Digital Sign Site and may choose to not enter into or cancel the Lease with HPTE for that particular site prior to construction of the Digital Sign, provided however, that CDOT shall sign such disposal manifests as may be legally required to enable Contractor to dispose of any removed materials.

3.6 Permits. Prior to erecting, constructing, installing, or placing a Digital Sign on a Digital Sign Site, Contractor shall, at its sole cost and expense, follow CDOT's standard

permitting process and obtain all Required Government Approvals required in connection with such Digital Sign, including, specifically obtaining any required CDOT Outdoor Advertising Permit (the “**Permits**”). The Permits shall be processed in accordance with Section 2 of the CDOT Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3, and § 43-1-408, C.R.S., each as may be amended, and any other law, rule or regulation governing CDOT’s outdoor advertising permitting process.

This Agreement does not and shall not be interpreted to require CDOT to permit placement of a Digital Sign on any particular Property or issue Permits. Contractor shall have the right to identify Properties which it believes are appropriate for development of Digital Sign Sites. Contractor shall comply with applicable laws, as may be amended from time to time, including but not limited to Highway Beautification Act, 23 U.S.C. 131, *et seq.*, the Highway Beautification Code of Federal Regulations, 23 C.F.R. Part 750, *et seq.*; the Colorado Outdoor Advertising Act, C.R.S. § 43-1-401, *et seq.*, and the Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3 in connection with the installation and operation of the Digital Signs.

3.7 Correction of Work. Contractor must, within thirty (30) days or such later date as may be reasonably required by Contractor (due to the nature of the defective Work or any Force Majeure), to correct Work (including any drawings, plans, specifications, programs, software, items of construction, assembly or installation, or any other product constituting a part or component of the Work) that HPTE reasonably rejects as defective or failing to conform to this Agreement (whether arising from a design, construction or other defect, error, omission or deficiency). If other portions of the Work are materially adversely affected by or are damaged by such defective Work, Contractor must, at its sole cost and expense and at the earliest reasonable practical opportunity, correct, repair or replace such affected or damaged Work, as well as any other property damaged by such defective or nonconforming Work. Contractor will bear all costs of correcting such defective or nonconforming Work, including additional testing and inspections and any design or engineering services and expenses made necessary thereby. If, after Contractor is notified by HPTE of defective or nonconforming Work, Contractor fails to timely correct such defective or nonconforming Work in accordance with this Section 3.7, HPTE may correct such Work and charge to Contractor the reasonable out-of-pocket costs of the same incurred by HPTE or CDOT if CDOT has the right to make corrections under a Sublease.

3.8 Deliverables.

(a) *Deliverables in General.* In carrying out its Work, Contractor must prepare and provide to HPTE the Deliverables. The “**Deliverables**” are the following: (i) quarterly reports documenting compliance with installation, operation, maintenance and other standards set forth in this Agreement; (ii) Status Reports (as defined below); and (iii) Revenue Reports (as defined below). All Deliverables must be prepared in a form and content reasonably satisfactory to HPTE and delivered in a timely manner consistent with the requirements of this Agreement.

(b) *Status Reports.* During the first 2 years of the Term, within five (5) business days after the expiration of each calendar month (or four week period) throughout the duration of this Agreement, Contractor must prepare and submit to HPTE a status report (each a “**Status Report**”), which Status Report must be prepared in a manner and format reasonably satisfactory

to HPTE and must include (i) a reasonably detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made, (ii) a statement of any significant Work issues that remain unresolved, and a list of Contractor's observations and suggested recommendations or resolutions as to the same, (iii) an updated report as to Contractor's adherence to the Installation Schedule, and specifically addressing whether the design, manufacture, assembly, and installation is on schedule or behind schedule and actions being taken to correct schedule delays, (iv) a summary of any significant Work events that are scheduled to occur during the following 30 days, (v) complaint logs, and (vi) product manuals, if available.

(c) *Revenue Reports.* During the Term, within five (5) business days after the expiration of each calendar month (or four-week period) through the duration of this Agreement, Contractor must prepare and submit to HPTE a revenue report summarizing accounts receivable and collections with respect to advertising sales and the receipt of Gross Revenues, including the deduction of any third party advertising commissions and amortized Capitalized Costs in calculating the same, pursuant to Section 6.1, from advertising on the Digital Signs (each, a "**Revenue Report**"). In the event of a public offering of securities related to the operation of Contractor's business, or to the extent otherwise applicable under federal or state securities laws, Contractor, by written notice to HPTE citing such applicable law (whether "quiet period" restrictions, prohibitions against forward looking guidance, or similar restrictions), may withhold such written Revenue Reports but shall, to the extent permitted by law, make the relevant financial information available to HPTE in another format or by another means.

(d) *Litigation Reporting.* If Contractor is served with a pleading or other document in connection with an action or other administrative decision making body challenging the legality of this Agreement or a Sublease which may affect Contractor's ability to perform its obligations under this Agreement, Contractor shall, within 10 business days after being served, notify HPTE of such action and deliver copies of such pleading or document pursuant to Section 13.15.

(e) *Rejection of Deliverables.* HPTE may reject Deliverables that do not include relevant information or data reasonably necessary to verify advertiser occupancy and payments required to be made by Contractor to HPTE hereunder. If HPTE determines Contractor has failed to comply with the foregoing standards, it may consider such failure to be a default by Contractor for the purposes of Article 12.

(f) *Partial or Incomplete Deliverables.* Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by HPTE. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

(g) *Quarterly Meetings.* At either party's request, the parties shall meet on a quarterly basis to review the Digital Sign Network's operation and any issues arising under this Agreement.

3.9 **Records and Audits.**

(a) *Records.* Contractor must deliver or cause to be delivered to HPTE all documents, including but not limited to all Deliverables prepared for HPTE under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then within a reasonable period of time after receipt of a written demand for them or upon termination or completion of the Work under this Agreement. In the event of the failure by Contractor to make such delivery, then and in that event, Contractor must pay to HPTE any damages HPTE incurs by reason of Contractor's failure. Contractor must maintain any such records including Deliverables not delivered to HPTE or demanded by HPTE for a period of five (5) years after the expiration or termination of this Agreement, whichever is later, to the extent that such records relate to documenting or determining the Capitalized Costs, Gross Revenues, Percentage Payments pursuant to Section 6.1, or as otherwise required under Colorado law.

(b) *Audits.* At its option, within sixty (60) days from HPTE's receipt of an Annual Report, no more than once per Lease Year, HPTE may cause (at its sole cost and expense), at any reasonable time during normal business hours (defined as 9:00 a.m. - 5:00 p.m. MST, Mondays through Fridays, except for federal and state holidays) at Contractor's notice address under Section 13.15 below, and in a reasonable manner, upon ten (10) business days' prior written notice to Contractor, an audit of such records, invoices, and other documents relating solely to the applicable Annual Report (as defined below) (the "**Records**"). Such audit shall be performed by a third party certified public accountant ("**CPA**") of HPTE's choice or by CDOT's external auditing division. The CPA (and HPTE) shall not remove or cause to be removed Contractor's Records from Contractor's office and shall keep all terms of Contractor's Records confidential. This confidentiality obligation shall survive the expiration or termination of this Agreement. In the event that such audit reveals any veritable underpayment (the "**Underpayment**"), HPTE shall promptly notify Contractor thereof and Contractor shall deliver a check made payable to HPTE in an amount equal to the Underpayment plus and amount equal to five (5%) of the Underpayment (the "**Underpayment Penalty Fee**") within ten (10) business days after receipt of such notice. In the event that Contractor discovers through its own or other independent review of its Records that any overpayment has been made to HPTE, Contractor shall promptly notify HPTE of such veritable overpayment and HPTE shall deliver a check made payable to Contractor in an amount equal to the overpayment within ten (10) business days after receipt of such notice.

3.10 Confidentiality. For the purposes of this Agreement, the term "Confidential Information" shall mean all proprietary or non-public information of Contractor, CDOT or HPTE, in any form that is identified as confidential or that by the circumstances surrounding disclosure ought in good faith to be treated as confidential. The receiving party may provide the disclosing party's Confidential Information to its employees, contractors, agents and licensees solely as necessary for the performance of its obligations in connection with this Agreement and as required in connection with the reporting requirements of the United States Securities and Exchange Commission and other applicable governmental agencies. Except to the extent specifically permitted in this Section, the receiving party shall keep the disclosing party's Confidential Information strictly confidential. The receiving party is responsible for any breach of this Agreement by its employees, contractors, agents and licensees. The receiving party will return or destroy all Confidential Information in written or electronic form at the disclosing party's request; provided, however, that each party may retain any analysis or work product that

are not summaries or extracts of Confidential Information. The confidentiality provisions of this Agreement do not apply to Confidential Information that: (i) is or becomes generally available to the public other than (1) as a result of a disclosure by the party receiving such information or any other person who directly or indirectly receives such information from such party or (2) in violation of a confidentiality obligation to the disclosing party known to the receiving party; or (ii) is or becomes available to the party receiving such information on a non-confidential basis from a source which is entitled to disclose it to such party; or (iii) was known to the receiving party prior to disclosure to it by the disclosing party; or (iv) is verifiably developed by the receiving party without the benefit of the Confidential Information provided by the disclosing party. If the receiving party is required by law or by interrogatories, requests for information or documents under Colorado Open Records Act, CRS §24-72-101, subpoena, civil investigative demand or similar process to disclose any Confidential Information, such party will provide the disclosing party with prompt, prior written notice of such request or requirement so that the disclosing party may seek an appropriate protective order or the receiving party's compliance with the provisions of this Agreement.

3.11 [Intentionally Deleted]

3.12 Personnel.

(a) *Adequate Staffing.* Contractor covenants to assign and maintain an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Work so as to maximize Gross Revenues from the Digital Signs and to operate the Digital Sign Network. The covenants in the immediately preceding sentence go to the essence of the parties' agreement. Contractor must include among its staff the Key Personnel described below. The level of staffing may be revised from time to time with advance notice to the Project Manager.

(b) *Key Personnel.* "**Key Personnel**" means those persons assigned to those positions (in accordance with this Section), set forth in Exhibit 2. The Project Manager may at any time, for good cause shown, notify Contractor in writing that HPTE will no longer accept performance of Work under this Agreement by one or more Key Personnel. Good cause shall include, without limitation, acts of dishonesty, fraud, failure to perform responsibilities resulting in more than three (3) Defaults within a calendar year and HPTE's sending of a Cure Notice in connection therewith, and similar recurring negative conduct materially detrimental to the parties' performance under this Agreement. Upon such a notice, Contractor must promptly suspend the services of such Key Personnel and must replace such Key Personnel in accordance with the terms of this Agreement. In addition, Contractor may remove Key Personnel from time to time, so long as Contractor uses all reasonable efforts to maintain continuity in the Key Personnel during the Term of this Agreement. HPTE has the right to approve in writing the replacement for any Key Personnel, regardless of the reason for replacement, which approval will not be unreasonably withheld or delayed. At least one of the Key Personnel must be available by telephone or text or electronic messaging system (at the numbers set forth in Exhibit 2). In addition, Contractor must have Key Personnel within HPTE on the days and at the times set forth in the schedule of availability that is attached hereto as Exhibit 2.

(c) *Colorado Office.* Contractor must maintain an adequately staffed business office within the State of Colorado in order to facilitate contact between Contractor and HPTE and to have contact with Colorado-based advertising companies, and media buyers. Such office must be equipped as necessary to accept and/or facilitate a response to questions, concerns, complaints (including calls to HPTE, which HPTE forwards to Contractor) and reports relating to the Digital Signs.

(d) *Benefits.* Contractor and Subcontractors are solely responsible for the compensation, benefits, contributions and taxes, if any, of all of their employees including, with respect to Contractor, the Key Personnel. Contractor and Subcontractors must at their own expense comply with all applicable workers' compensation, unemployment insurance, employer's liability, tax withholding, minimum wages and hours, and other Laws.

(e) *Responsibility.* Contractor is responsible for the acts or omissions of its Subcontractors, their respective agents and employees, and any other third parties performing portions of the Work on Contractor's behalf.

3.13 Safety. Contractor is responsible for initiating, maintaining and supervising comprehensive safety precautions and programs in connection with the performance of this Agreement, including, without limitation, appropriate precautions and programs for areas in and around the performance of the Work under OSHA and other applicable Laws. Contractor must erect and maintain, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the public, CDOT and users of adjacent sites and utilities. Contractor must promptly remedy damage and loss to property to the extent caused in whole or in part by Contractor, a Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, including, without limitation, any damage to buried utilities arising from Contractor's performance of any subsurface excavation, boring or foundation work, or any damage to overhead utilities arising from Contractor's installation of the Digital Signs. The foregoing obligations of Contractor are in addition to Contractor's indemnity obligations hereunder.

3.14 Assignments and Subcontracts.

(a) Standards for Assignments and Subcontracts.

(i) Except as permitted under Section 12.1(d)(vii) and (viii), Section 13.9, and the definitions of "Approved Transferee", "Permitted Lender Financing", and "Permitted Transfer", Contractor must not assign, delegate, or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, without the express written consent of HPTE, which consent shall not unreasonably be withheld, conditioned or delayed. Contractor acknowledges that it was selected based on its unique expertise and ability to design, manufacture, assemble, install, program and successfully operate the Digital Sign Network, both with respect to maximizing Gross Revenues, the display of State Public Service Messages,

and the transmission of State Emergency Messages. Contractor may not knowingly enter into a contract or arrangement with, or otherwise permit, any Subcontractor to perform any portion of the Work if such Subcontractor is barred or prohibited from contracting with HPTE or has been found to be nonresponsive by the Director, and without the prior written approval of HPTE. The absence of such a provision or written consent voids the attempted assignment, delegation, subcontracting or transfer and is of no effect as to the Work or this Agreement. No approvals given by HPTE operate to relieve Contractor of any of its obligations or liabilities under this Agreement; provided, however, that if a permitted successor or permitted assignee executes and delivers to HPTE a written assumption agreement assuming Contractor's obligations under this Agreement in form and substance reasonably satisfactory to HPTE, upon the effectiveness of such a written assumption agreement, Contractor shall be released from any further obligations under this Agreement. Transfers constituting Permitted Transfers or transfers of security interests to a lender pursuant to a Permitted Lender Financing shall be deemed expressly permitted by this Agreement, subject to the terms and conditions applicable to such transfers (including those set forth in the definitions of Approved Transferee and other applicable definitions).

- (ii) All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement resulting in a Default hereunder that extends beyond all stated notice and cure periods, HPTE has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Contractor personally or through any other HPTE-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Work under this Agreement under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement.
- (iii) Upon the request of HPTE, Contractor must furnish HPTE with copies of its subcontract agreements with Subcontractors of the first tier. All subcontracts relating to Subcontractors of the first tier must contain provisions that (A) require the Work to be performed in strict accordance with the applicable requirements of this Agreement, and (B) ensure the Subcontractors are subject to all applicable terms of this Agreement. If the agreements do not prejudice any of HPTE's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to matters not affecting the quality of the Work or Contractor's obligations to HPTE.

3.15 **Warranty.** Contractor warrants to HPTE that all Work will be performed in

accordance with generally accepted industry standards for each category of Work (including, without limitation, any applicable OAAA standards), that all Work provided under this Agreement will be performed in a good and workmanlike manner (including, without limitation, the assembly and installation work, which must also be performed in accordance with sound construction practices), that all Digital Signs and materials, supplies and equipment furnished under this Agreement will be of good quality, that the Work (including, without limitation, each item of equipment incorporated therein) will be of good and workmanlike quality and free from faults, defects and deficiencies, and that the Work will conform with the requirements of this Agreement. During the Term of this Agreement, Contractor must promptly correct any failure to comply with this warranty or breach of this warranty, which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement (including replacement of any LED lights or Digital Sign components or Ad Panels that may need replacement prior to the end of their anticipated useful life or scheduled refurbishment pursuant to Section 3.17 below), reassembly, reconstruction, retesting and/or re-inspection of any part or portion of the Work, without cost to HPTE. Costs incurred with respect to such remedial or corrective actions shall not be or become Capitalized Costs. Contractor shall obtain not less than a 3-year warranty from the manufacturer of the Ad Panels. Such warranty shall not, however, limit Contractor's obligations under this Section 3.15 and Contractor shall remain ultimately responsible for the continuous operation of the Digital Signs in accordance with the terms of this Agreement.

3.16. Performance and Payment Bond. No Digital Sign shall be installed until the Contractor shall have furnished and delivered to the HPTE a Performance and Payment Bond, in the form attached hereto as Exhibit 5, in a sum equal to \$250,000.00 to cover the total design, manufacturing, assembly, engineering, procurement and construction costs and payment of the Percentage Rent for each approved Digital Sign duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein. Such Performance and Payment Bond shall be released upon completion of construction of each applicable Digital Sign(s) or shall be transferred to cover construction of subsequent Digital Sign(s). Contractor shall have the right to consolidate multiple approved Digital Signs under a single Performance and Payment Bond at a rate of \$250,000.00 per approved Digital Sign. Upon completion of construction of the first Digital Sign, Contractor shall furnish and deliver to the HPTE a Performance and Payment Bond in the form attached hereto as Exhibit 5, in a sum equal to \$1,000,000.00 to cover the total, aggregate Percentage Rent payable by Contractor under all Subleases entered or to be entered by Contractor under this Agreement. Such Payment and Performance Bond shall be released upon expiration or termination of all Subleases for all constructed Digital Sign(s). No Performance and Payment Bond furnished and delivered under this Section 3.16 is intended to cover the required Digital Sign refurbishment or replacement (as applicable) obligations under Section 3.17.

3.17 Required Digital Sign Refurbishment or Replacement. No later than the date that is ten (10) years following the date that each Digital Sign and the fixtures and equipment appurtenant thereto is installed, Contractor shall, at Contractor's sole cost, refurbish or replace (as applicable) such Digital Signs Sign and the fixtures and equipment appurtenant thereto so that it has an equivalent functionality comparable to digital sign technology then being sold in the outdoor advertising market. If necessary, such refurbishment or replacement requirement may

require (in Contractor's sole discretion) the complete replacement of the Ad Panel, including LED lights, fixtures, wiring and sign components, addition of light diffusing or controlling features, incorporation of new solar, energy savings or similar "green" features, and similar improved technologies. Such refurbishment or replacement (as applicable) costs shall not exceed of a total of \$9 Million for 60 Digital Signs and shall be subject to recovery in accordance with the payments provisions of Section 6.1 in the same manner as the initial Capitalized Costs.

Such refurbishments or replacements (as applicable) may be done on a rolling basis, taking into account the installation date and performance of a given Digital Sign and the fixtures and equipment appurtenant thereto, so long as all such refurbishments or replacements (as applicable) are done no later than ten (10) years from the date of the installation of such sign, and the ten (10) year anniversary thereof with respect to the second refurbishment or replacement (as applicable).

ARTICLE 4

COORDINATED DIGITAL SIGN PROGRAM AND RELATED SERVICES

4.1 **Selection of the Digital Sign Sites.** Promptly following the Effective Date hereof, Contractor shall diligently work to identify Digital Sign Sites. Following the selection of such Digital Sign Sites by Contractor, HPTE and CDOT shall review and research the proposed Digital Sign Sites and if they both deem such Digital Sign Site(s) to be acceptable, CDOT and HPTE shall enter into a Lease for each affected Property. HPTE shall notify Contractor of such approval and Contractor shall then pursue all necessary Permits described in Section 3.6 for such approved Digital Sign Sites. HPTE shall provide Contractor with such documentation as may be reasonably required by Contractor to pursue the Permits. Upon issuance of all required Permit(s) for each Digital Sign, Contractor will have the exclusive right to erect, install, construct, place, program, maintain, operate, remove and dismantle the applicable Digital Sign and the fixtures and equipment appurtenant thereto and HPTE shall execute a Sublease with Contractor in the form attached hereto as Exhibit 1B. HPTE will, in good faith, cooperate with Contractor and work with CDOT to confirm the acceptability of each Digital Sign Site.

All approved Digital Sign Sites shall be automatically deemed attached hereto as Exhibit 1F. The parties hereby acknowledge and agree that, at a minimum, the following criteria shall be reasonably considered in determining the appropriateness of a Property for implementation of the Digital Signs: (i) availability of such Property to lease; (ii) CDOT's willingness to lease such Property; (iii) daily traffic counts, (iv) general appeal to national advertisers, (v) competitive signage and other advertising in the general proximity and in the market, (vi) Contractor's ability to obtain the Permits, (vii) visibility from vehicular, public rights-of-way, (viii) availability of electrical utility service; (ix) accessibility of such locations; and (x) the overall distribution of the Digital Sign Sites (network appeal to advertisers). HPTE has no duty to assist Contractor in locating Digital Sign Sites, but will, in good faith, work with CDOT to confirm the acceptability of the proposed Digital Sign Sites.

4.2 **Plans and Specifications of Digital Signs.** Prior to submitting applications for the Permits pursuant to Section 3.6 above, Contractor will provide copies of its plans and specifications (the "**Plans and Specifications**") to HPTE. Within twenty (20) business days following HPTE's receipt of such Plans and Specifications, HPTE shall, acting reasonably, confirm (or deny) that such Plans and Specifications comply with the Minimum Design Specifications set forth in Exhibit 1E. Upon such confirmation by HPTE, Contractor shall be permitted to submit such applications for the Permits.

4.3 **Installation of Digital Signs.**

(a) *Time for Installation.* Upon receipt of the Permits for a given Digital Sign, HPTE and Contractor shall enter into a Sublease in the form attached hereto as Exhibit 1B and thereafter, Contractor will promptly commence manufacturing (or cause such manufacturing to commence), assembling and installing such Digital Sign so as ensure compliance with the Installation Schedule. Contractor covenants and agrees that it will comply with the Installation Schedule, which schedule may be adjusted as described in Section 12.4. Further, Contractor shall be entitled to install a nameplate on the bottom of each Digital Sign, identifying Contractor as the owner and operator of such Digital Sign.

(b) *Conditions of Installation.* All Digital Signs must be installed in conformity with the Installation Schedule. Contractor must also comply with Laws generally applicable to construction projects in the State of Colorado and, as applicable, to work in the public way, including all applicable CDOT rules and regulations, except to the extent expressly exempted, waived or modified by the State of Colorado or other municipal ordinances passed after the date of this Agreement.

(c) *Inspection by HPTE.* HPTE shall have the right at its discretion (but not the obligation) at all times to inspect the Digital Signs during the installation process. Contractor must respond promptly to any reasonable concerns, questions or comments raised by HPTE. HPTE may reject defective Work in accordance with Section 3.7. No inspection by HPTE shall operate to relieve Contractor of any of its obligations or liabilities under this Agreement or give HPTE any liability or responsibility for the installation of the Digital Signs, including any errors or omissions relating thereto.

(d) *Access.* In the event that a Property includes any buildings or other structures located thereon (“**Buildings**”), HPTE will ensure, through its Lease with CDOT, that CDOT provides rights sufficient to enable HPTE to grant Contractor the rights to access and use in common with others entitled thereto (a) all public exterior areas of the Building used in common with all occupants thereof the Building (collectively, the “**Common Areas**”), and (b) the risers, chases, conduit and other infrastructure of the Building (collectively, “**Building Infrastructure**”) and access thereto; in all cases for the purposes of permitting, installing, operating, maintaining, repairing, and replacing or refurbishing (as applicable) the Digital Signs. To the extent reasonably possible and absent exigent circumstances, Contractor shall use the Common Areas at such times and in such a manner so as to minimize any unreasonable disturbance to the occupants of the Building. As will be set out in specific Subleases, Contractor shall provide HPTE and/or CDOT, at least twenty-four (24) hours’ prior written notice (except in the event of an emergency for which notice shall still be provided to HPTE as soon as reasonably practical) of any intended use of the Common Areas; provided, however, Contractor may, without any prior notice to HPTE, access the Common Areas in connection with Contractor’s day-to-day business operations relating to the installation, operation, maintenance, repair, and/or replacement or refurbishment of the Digital Signs. Contractor’s notice requirements to HPTE will be set out in a specific Sublease. Notwithstanding anything in this paragraph to the contrary, absent exigent circumstances, Contractor agrees to obtain, in advance, permission from CDOT personnel on site (as applicable) to enter any Property for any purposes described in this Agreement, which permission shall not be unreasonably conditioned, delayed or withheld.

4.4 **Visibility.** It is the understanding of the parties that visibility of the Digital Signs to the traveling public is the essence of this Agreement. Under each Lease, (i) except with respect to any obstructions which may exist as of the Effective Date hereof (other than brush, trees, shrubs, or any vegetation), CDOT shall agree not to cause or permit visibility of all or any portion of the Digital Signs to the traveling public to be obstructed or obscured, and (ii) CDOT shall agree to, as soon as reasonably practicable, trim, cut, or remove brush, trees, shrubs, or any vegetation and remove any other obstructions of any kind on the Properties which limit the visibility of the Digital Signs. Under each Sublease, HPTE shall agree to cause CDOT to comply with both such obligations under the immediately preceding sentence, and, in the event that

CDOT does not comply with its obligation under (ii) thereof, without limiting Contractor's other rights and remedies hereunder or under the Sublease, Contractor may complete the applicable work thereunder. The costs to trim, cut, or remove brush, trees, shrubs, or any vegetation, whether performed by CDOT (for its reasonable third party costs) or Contractor, in accordance with this Section 4.4 above shall be borne by Contractor.

4.5 Electricity for Digital Signs.

(a) *Provision of Electricity.* Contractor must provide and install in each Digital Sign all necessary wiring, infrastructure and connections to power sources in order to provide continuous and uninterrupted electricity to the Digital Sign, to support both the advertising, the State Public Service Messages and the State Emergency Messages. HPTE shall cooperate with Contractor in obtaining the cooperation of and all approvals as may be required from the local utility company and any third parties whose consent or authorization is required in order to perform any such electrical connection work. In order to minimize trenching on streets, Contractor will connect its Digital Signs to the closest electrical supply source(s), subject to Contractor's obtaining necessary approvals and, as applicable, a permit. Under each Lease, CDOT shall agree to provide reasonable assistance to Contractor to facilitate such approvals, and under each Sublease, HPTE will agree to cause CDOT to provide such reasonable assistance to Contractor. Contractor will be responsible the installation cost (including separate metering) and ongoing cost of electricity for the Digital Signs.

(b) *Requirements for Electrical Work.* In performing electrical work pursuant to this Agreement, Contractor must comply with all applicable Laws. Contractor shall have the right, at its sole cost and expense, to install, operate and maintain such electrical utility facilities, lines or connections as may be reasonably necessary or appropriate in order to afford adequate illumination and operation of the Digital Signs. Contractor shall be responsible for paying for all electrical power consumed by its Digital Signs. To this effect, Contractor shall cause its utility facilities to be separately metered.

4.6 Maintenance of Digital Signs.

(a) *Maintenance Standards.* Throughout the Term of this Agreement, Contractor must maintain the Digital Signs and Digital Sign Network in good working order in accordance with the maintenance standards set forth in Exhibit 1C. HPTE shall have no responsibility for maintenance or inspection of the Digital Signs or the Digital Sign Network.

(b) *Inspection by HPTE.* HPTE shall have the right at its discretion (but not the obligation) at all times to inspect the Digital Sign or the Digital Sign Network during the maintenance process. Contractor must promptly respond to any concerns, questions or comments raised by HPTE. No inspection by HPTE shall operate to relieve Contractor of any of its obligations or liabilities under this Agreement or give HPTE any liability or responsibility for the maintenance of the Digital Signs or the Digital Sign Network, including any errors or omissions relating thereto.

4.7 Advertising on Digital Signs.

(a) *Grant of Right.*

In consideration of Contractor's performance of the Work, Contractor's other obligations under this Agreement, and Contractor's payment obligations under Section 6.1 below, HPTE hereby grants to Contractor the exclusive right following the Effective Date and during the Term of this Agreement to sell and place advertising on the Digital Signs subject to the terms of this Agreement.

(b) *Placement of Advertising.*

(i) Advertising may be placed on Digital Sign, and such sign must at all times be illuminated in such a manner as to not interfere with motorist sight lines necessary for traffic safety, so as to not distract motorists, so as to not shine or direct light into residences, schools, businesses or churches or so as to not otherwise cause a visual nuisance.

(ii) Contractor may operate each Digital Sign and operate such sign on a 7 day a week basis for not less than 17 hours per day or such other lesser customary duration as may be required to assure that advertisers pay the highest rate card percentage possible and that Ad Panel Occupancy rates are minimized to the greatest extent possible. All Digital Signs shall be put into a "sleep" or "inactive" mode between 12:00 a.m. and 5:00 a.m. so as to minimize night-time light diffusion, unless HPTE and Contractor otherwise agree in writing, and Digital Signs in proximity to Residential districts shall be subject to the further operational limits set forth in Exhibit 1C.

(c) *Restrictions on Advertising.* Contractor must adhere to its advertising policy attached hereto as Exhibit 3 when placing advertising on Ad Panels. Subject only to the restrictions expressly set forth in Exhibit 3, which HPTE shall have the right to enforce at all times, Contractor has the right to make all decisions regarding the acceptance of advertising for the Digital Signs pursuant to its own advertising policy and goals, and shall be solely responsible for such decisions. It is HPTE's express intent, and Digital Signs Network work shall at all times be so operated, that the Digital Signs and Digital Signs Network and HPTE property on which they are located are not designated public forums for purposes of any First Amendment forum analysis. This requirement is a material inducement to HPTE's execution of this Agreement and is not severable. During the Term of this Agreement, Contractor shall have the exclusive right to market and sell advertising on the Digital Signs.

(d) *Use of Display Time on Digital Signs Time by HPTE.* For a total of three (3) minutes per hour on each of the Digital Signs (annualized commencing on the Effective Date thereof), together with any additional time on a space-available basis as determined by Contractor with respect to all of the Digital Signs (the "**Display Time**"), to the extent permissible under applicable Laws, Contractor shall display State Public Service Messages, provided that: (A) each proposed State Public Service Message is submitted (via email) to Contractor not less than five (5) business days prior to the date on which State Public Service Message is proposed to be displayed on the Digital Signs (the "**Copy Submission Deadline**"); (B) all proposed State Public Service Message submitted to Contractor is subject to Contractor's review and approval; (C) all digital artwork is consistent with the quality of material to be posted on the Digital Signs; and (D)

HPTE pays for all digital production costs associated with State Public Service Message. HPTE may contact Contractor's local sales office from time to time to determine advertising availability on the Digital Signs. In no event shall HPTE be permitted to give, sell, trade, barter or exchange the Display Time to any third party that is not a State department or division. By submitting such advertising materials and content to Contractor, HPTE represents and warrants that such advertising materials and content supplied by HPTE to Contractor for display under this Agreement (i) comply with all applicable Laws and any industry codes or rules by which HPTE and/or Contractor may be bound and do not contain any obscene, libelous, slanderous or otherwise defamatory materials or refer in an offensive manner to the gender, race or ethnicity of any individual or group; (ii) are accurate and that all claims contained therein have been substantiated; and (iii) do not infringe upon any copyright, trademark or other intellectual property or privacy right, or misappropriate the rights, of any third party. In addition, to HPTE Display Time, Contractor will further provide HPTE with use of the Digital Signs for the prompt display of any State Emergency Messages during the period of such emergency without having to go through any of the State Public Message process outlined above, except that HPTE and CDOT shall be solely responsible for all liability arising out of or in connection with such State Emergency Messages.

(e) *New Technology.* Nothing in this Agreement shall prevent Contractor from proposing and implementing new technologies for Digital Signs, the Digital Sign Network, or advertising displays, subject to the approval of HPTE.

(f) *Exclusive Off-Premises Digital Signs Provider.* HPTE agrees that, during the Term, HPTE shall not enter into a lease, license, sales representation agreement, or any other agreement or arrangement which permits all or any portion of the Properties, including, without limitation, the exteriors of any Buildings, to be used for purposes of displaying or exhibiting any third party advertising on "off-premises" signage then-located thereon (collectively, "**Contractor's Exclusive Use**"). HPTE shall not directly or indirectly (itself or through others, including, without limitation, its agents, property managers or third parties) violate Contractor's Exclusive Use. Further, each Lease shall provide that CDOT shall not directly or indirectly (itself or through others, including, without limitation, its agents, property managers or third parties) violate Contractor's Exclusive Use in connection with the applicable Property(ies) thereunder. HPTE shall cause CDOT to comply with such obligation under each Lease.

4.8 Ownership of Digital Signs; Removal at Expiration or Early Termination. The Digital Signs on the Digital Sign Sites and all sign(s), structure(s), improvements and appurtenances thereto placed by or for Contractor and any and all permits related thereto shall at all times remain the property of Contractor, and Contractor shall have the right to remove the same at any time during the Term of this Agreement (as the same may be extended) and shall have the obligation to remove the same within a reasonable amount of time after the expiration or termination of the Sublease not to exceed six (6) months thereafter or such additional time as may be reasonable or necessary under the circumstances. When Contractor removes its Digital Signs, it shall not include a removal of any subsurface infrastructure, including, without limitation, any spread footings. Notwithstanding the immediately preceding sentence, in the event of an earlier termination of this Agreement and/or any Subleases by HPTE pursuant to Section 12.7, if the continued presence of Contractor's Digital Signs on the Property(ies) thereunder would impair or

prevent the development or redevelopment of such Property(ies) by CDOT, as evidenced by plans (copies of which have been delivered by HPTE to Contractor via email or in writing), then upon not less than one hundred eighty (180) days' prior notice from HPTE, Contractor shall remove all of any subsurface infrastructure thereof (including, without limitation, any spread footings), provided that (i) Contractor determines in its reasonable discretion that such removal is not likely to damage, compromise, or disturb any subsurface utility lines, improvements or items and/or compromise the stability of any above-grade fixtures and/or elements on the Property; and (ii) all reasonably documented costs and expenses incurred by Contractor in connection with such removal shall be reimbursed to Contractor out of Gross Revenues (prior to the payment of Percentage Rent under Section 6.1). The future existence of below grade improvements shall not constitute continued occupancy of the Property by Contractor. If upon the expiration of the Term of this Agreement (as the same may be extended) the parties hereto are engaged in good faith negotiation of the terms of a renewal lease, then Contractor shall not be obligated to remove its Digital Signs from the Property until ninety (90) days after the receipt of written notice from HPTE expressly stating that HPTE does not desire to continue such renewal negotiation. Neither CDOT, HPTE nor anyone claiming by, through or under CDOT or HPTE shall acquire any rights in and to the software, technology or other intellectual property that is owned or licensed by Contractor and used in connection with the Digital Signs.

4.9 **Condemnation.** In the event that all or any part of the Properties is/are acquired or sought to be acquired by or for the benefit of any entity having or delegated the power of eminent domain, Contractor shall, at its election and in its sole discretion, be entitled to: (i) contest the acquisition and defend against the taking of Contractor's interest in such Properties; (ii) reconstruct the Digital Signs on any portion of the Properties not being acquired, as reasonably approved by HPTE and CDOT; and (iii) recover damages to and compensation for the fair market value of its leasehold and Digital Signs taken or impacted by the acquisition from the entity having or delegated the power of eminent domain. No termination right set forth anywhere in this Agreement may be exercised by HPTE if any of the Properties or any portions thereof are taken or threatened to be taken by eminent domain, or if any of the Properties or any portions thereof are conveyed or to be conveyed to or for the benefit of any entity having the power of eminent domain.

ARTICLE 5 TERM OF PERFORMANCE

5.1 **Term.** The term of this Agreement (the "**Term**") shall commence at 12:01 a.m. on the Effective Date hereof and expire at 11:59 p.m. on the date in which is twenty (20) years following the earlier of (i) the date on which the first Digital Sign face is fully installed and operational on the Property, or (ii) the date that is eighteen (18) months following the Effective Date hereof (such earlier date, the "**Commencement Date**"), unless sooner terminated pursuant to the terms and provisions of this Agreement. The first "**Lease Year**" of this Agreement shall commence on the Commencement Date and shall end on the last day of the twelfth (12th) full calendar month thereafter, and each Lease Year thereafter shall mean each subsequent full, consecutive twelve (12) month period during the Term of this Agreement. The Commencement Date shall be mutually agreed upon (in writing or via email) by the parties promptly following the

occurrence thereof; provided that the failure by either party, or both parties, to agree upon the Commencement Date shall not in any way or manner affect the rights or obligations of either party hereunder. In the event a Legal Challenge occurs (a) during the installation phase, the Contractor may elect to defer the further installation of Digital Signs until such Legal Challenge is resolved and such installation may resume, or (b) after such installation phase and the Legal Challenge enjoins the further operation of the Digital Signs, then the term of this Agreement shall be ratably extended based on the length of any such deferral or injunction. In either such event, any other impacted dates for performance shall be adjusted accordingly and the parties shall execute an amendment to this Agreement to memorialize such adjusted dates. For example, if clause (a) occurs, and it takes one year to favorably resolve such Legal Challenge and resume installation, installation deadlines shall be pushed back one year, refurbishment dates shall be pushed back one year, any other applicable performance based dates shall be pushed back one year, and the term of this Agreement shall be extended one year.

5.2 **Timeliness of Performance.**

(a) *Contractor's Performance.* Contractor must design, manufacture, assemble, program, install, maintain, operate, and, (if directed by HPTE) remove and dismantle the Digital Signs and maintain and restore the underlying and other surrounding property affected by the Work, and provide the Deliverables during the agreed-upon timeframe under this Agreement, provided that all Permits are timely received by Contractor (the "**Installation Deadline**") and subject to the equitable extensions provided for in Section 12.4.

(b) *HPTE Not Responsible for Delays.* Neither Contractor nor Contractor's agents, employees or subcontractors are entitled to any damages from HPTE, nor is any party entitled to be reimbursed by HPTE, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Work, unless caused by or through the gross negligence or willful misconduct of HPTE, its employees or agents.

ARTICLE 6 PERCENTAGE RENT

6.1 **Percentage Rent.** Beginning on the Commencement Date, Contractor shall pay to HPTE an amount equal to forty percent (40%) of Gross Revenues (the "**Percentage Rent**"), subject to Section 4.8 with respect to any applicable removal costs thereunder. "**Gross Revenues**" shall mean all revenues actually received by Contractor from the sale of advertising on the Digital Signs located on the affected Property (whether marketed directly by Contractor, or through an advertising agency or a media buyer), *less* (i) any commercially reasonable advertising commissions paid by Contractor to third parties that are not employees or Affiliates of Contractor, not to exceed 16.67%, and (ii) the repayment to Contractor of the Capitalized Costs, straight-line amortized over a period of seven (7) years. The Percentage Rent shall be paid on or before the fifteenth (15th) day of each month for Gross Revenues during the immediately preceding month, together with a summary of such Gross Revenues and Percentage Rent. Within sixty (60) days after the end of such Lease Year, Contractor shall provide to HPTE a full and accurate statement of the Gross Revenues and the Percentage Rent for such Lease Year (the "**Annual Report**").

Notwithstanding the foregoing, prior to the Commencement Date, the total rent shall be Ten and 00/100 (\$10.00) Dollars.

6.2 Method of Payment. All payments due from Contractor hereunder must be made by cashier's check delivered to HPTE's Office of Budget Management (attention: Director of Capital Programs) or by other method of payment approved in advance in writing by HPTE's Office of Budget Management.

6.3 Late Payment. In the event that a Percentage Rent payment is not delivered to HPTE within ten (10) business days after Contractor's receipt of written notice from HPTE that such Percentage Rent payment has not timely been received by HPTE, such Percentage Rent payment shall be subject to a late fee of four (4%) percent per annum until paid.

ARTICLE 7 DISPUTES

7.1 Dispute Resolution.

(a) *Presentation of Disputes to HPTE.* Contractor must initially bring any dispute concerning a question of fact arising under this Agreement, which is not otherwise disposed of, to HPTE. HPTE shall make a decision regarding the appropriate resolution of the dispute after a hearing based upon written submissions of the parties with 21 days of HPTE's receipt of such written submissions. HPTE will reduce his or her decision to writing and mail or otherwise furnish a copy of it to Contractor.

(b) *Mediation.* Absent circumstances that, in either party's reasonable judgment, render mediation inappropriate, after HPTE's initial decision, in the event of a continuing material dispute between the parties pertaining to this Agreement, before bringing a legal action in the U.S. District Court for the Northern District of Colorado, the parties agree to engage in mediation before a mediator mutually agreed to by the parties in writing in order to attempt to resolve such dispute without such litigation. Each party shall pay one-half of the costs of such mediation. If HPTE and Contractor cannot agree upon a mediator, each party shall select a mediator, and such two mediators shall mutually agree in writing upon a third mediator who shall mediate such dispute.

(c) *Prerequisite to Appeal.* After complying with Section 7.1(a) and (b) above, if a continuing material dispute remains, either party may seek relief in the federal or state courts located in the State of Colorado.

(d) *Matters Requiring Immediate Relief.* Notwithstanding the above, matters requiring the filing of, or the responding to, a temporary restraining order, preliminary injunction, or other legal action seeking immediate relief, may be brought by either party as an initial matter in a suit filed with the federal or state courts located in the State of Colorado.

ARTICLE 8

INSURANCE

8.1 Insurance.

(a) *Insurance Limits.* Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and during any time period following the expiration or termination of the Agreement if Contractor is required to return and perform any additional Work, the insurance coverages and requirements specified below insuring all operations related to this Agreement. Contractor shall also require any Subcontractor performing any portion of the Work to obtain reasonable insurance coverage with respect to the portion of the Work that such Subcontractor shall and is performing. All such insurance policies must indicate that as respects the insureds (whether named or otherwise), cross-liability and severability of interests must exist for all coverages provided thereunder.

- (i) Workers' Compensation and Employers' Liability. Workers' Compensation Insurance as required by state statute and Employer's Liability Insurance covering all employees who are to provide a service under this Agreement or a Sublease with limits of not less than \$100,000 (or, if greater, any then applicable statutory coverage limit) for each accident or illness.
- (ii) Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering all premises and operations, fire damage, independent Consultants, products and completed operations, blanket contractual liability, personal injury, separation of insureds, defense, and advertising liability with minimum limits as follows:
 - (a) \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability. HPTE must be named as additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Work.
 - (b) \$2,000,000 general aggregate;
 - (c) \$2,000,000 products and completed operations aggregate; and
 - (d) \$50,000 any one fire.
- (iii) If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor, or as applicable their Subcontractor, shall

immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to HPTE showing compliance with this Section 8.1

- (iv) Automobile Liability (Primary and Umbrella). When any motor vehicles (including owned, non-owned and hired) are used in connection with work to be performed, Contractor must provide Automobile Liability Insurance with limits of not less than \$1,000,000 each accident combined single limit.
- (v) Professional Liability. When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering damages caused by an error, omission or any negligent act must be maintained with limits of not less than \$2,000,000 each occurrence and \$2,000,000 general aggregate. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two years.
- (vi) Property Insurance/Installation Floater. All Risk Property Insurance, at replacement cost, for all loss or damage to any structure, machinery, equipment, building materials or supplies, being used with and during the course of the manufacturing, assembly, installation, maintenance and operation of the Digital Signs.

(b) *Primacy of Coverage*. Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by HPTE or CDOT for losses which arise out of the negligence or willful misconduct of Contractor, its employees and agents.

(c) **Additional Insurance Requirements.**

- (i) Contractor must furnish to HPTE original Certificates of Insurance, or such similar evidence, to be in force on the Commencement Date, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Contractor must submit evidence of insurance prior to the execution of this Agreement. The receipt of any certificate does not constitute agreement by HPTE that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of HPTE to obtain certificates or other insurance evidence from Contractor is not a waiver by HPTE of any requirements for Contractor to obtain and maintain the specified coverages. Contractor must advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming

insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and HPTE retains the right to stop work until proper evidence of insurance is provided, or this Agreement may be terminated.

- (ii) The insurance must provide for 30 days' prior written notice to be given to HPTE in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.
- (iv) Contractor agrees to waive its right of subrogation against HPTE, CDOT and the State, its employees, elected officials, agents, or representatives.
- (v) The insurance coverages and limits furnished by Contractor in no way limit Contractor's liabilities and responsibilities specified within this Agreement or by Law.
- (vi) Any insurance or self-insurance programs maintained by HPTE do not contribute with insurance provided by Contractor under this Agreement.
- (vii) If Contractor or a Subcontractor desire additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.
- (viii) HPTE Risk Management Department maintains the right to modify, delete, alter or change these requirements.
- (ix) The insurance coverage provided in Section 8.1 shall support, but is not intended to limit, Contractor's indemnification obligations in Section 9.1.

ARTICLE 9

INDEMNIFICATION

9.1 Contractor's Indemnification.

(a) *Obligation.* Contractor must defend, indemnify, keep and hold harmless the Indemnitees (as defined below) from and against any and all Losses (as hereinafter defined) caused by:

- (i) injury (including any libel or advertising-based injury) death or damage of or to any person or property;
- (ii) any infringement or violation of any property right, whether real, personal, intellectual property or intangible;

- (iii) failure to pay or perform or cause to be paid or performed Contractor's covenants and obligations as and when required under this Agreement or otherwise to pay or perform its obligations to any Subcontractor;
- (iv) HPTE's exercise of its rights and remedies under Section 12.2 of this Agreement; and
- (v) injuries to or the death of any employee of Contractor or any Subcontractor under any workers' compensation statute.

(b) *Indemnitees and Losses.* “**Indemnitees**” means, collectively, HPTE, the State of Colorado and CDOT, and its respective officers, representatives, elected and appointed officials, agents and employees. “**Losses**” means, individually and collectively, asserted or actual liabilities of every kind, including actual losses, damages and reasonable costs, payments and expenses (including court costs and reasonable attorneys' fees and disbursements) arising out of third party claims, demands, actions, suits, proceedings, judgments or settlements that arise out of the negligence or willful misconduct of Contractor, its employees, agents and Subcontractors. “Losses” shall not include, however, special, consequential, punitive or indirect damages.

(c) *Defense of Suits.* At HPTE's option (and subject to HPTE's obligation to defend against a Legal Challenge), Contractor must defend against all third party suits against Indemnitees for Losses and must pay all reasonable costs and expenses incidental to them, but Indemnitees have the right, at their option, to participate, at their own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Agreement. Contractor shall have the right to select the counsel to defend such suit, subject to Indemnitees' and the Colorado Attorney General's Office's reasonable consent. Contractor, if not named a party, may seek to intervene in such suit in order to defend against such claim for Losses. Any settlement must be made only with the prior written consent of Indemnitees if the settlement requires any payment or action on the part of HPTE. Any settlement must be made only with the prior written consent of Indemnitees if the settlement requires any payment or admission of fault on the part of Indemnitees.

Indemnitees shall give written notice to Contractor of any claim for indemnification under this Article 9 within one year of Indemnitees actual notice of the event giving rise to such indemnification obligation, provided, however, that such one year period shall be tolled during such time as Indemnitee has agreed to forbear the exercise its rights under this Article 9 or its remedies under Article 12 in an effort to settle a disputed matter or so as to allow Contractor additional time to cure a Default. Delivery of a Cure Notice shall be deemed to satisfy the written notice obligation described in the immediately preceding sentence.

In the event a third party files a suit seeking a declaration as to the invalidity or unenforceability of this Agreement as a whole, which challenge if successful, would prohibit the operation of one or more of the Digital Signs in Digital Signs Network (such event, a “**Legal Challenge**”), then upon and after the filing of such a Legal Challenge, and until its dismissal or a final non-appealable judgment defeating such Legal Challenge, all Gross Revenues available for payment to HPTE and Contractor shall, notwithstanding the provisions of Section 6.1, be paid as

follows: *first*, to the reasonable legal fees and expenses of outside counsel and any expert witnesses retained by HPTE in defending against such Legal Challenge; *second*, to the reasonable legal fees and expenses outside counsel and any expert witnesses retained by Contractor in defending against such Legal Challenge; and *third*, to Contractor until such time as Contractor has been paid an amount equal to Contractor's Capitalized Costs, as substantiated by certificates delivered to HPTE in accordance with the "Capitalized Costs" definition, taking into account all prior payments to Contractor under Section 6.1 (and this Section 9.1(c)) in recovery of such costs. Thereafter, additional Gross Revenues available for payment shall be paid in accordance with Section 6.1. Upon dismissal or defeat of such a Legal Challenge, the parties shall equitably adjust the payments made to date, including pursuant to this Section 9.1(c), to restore the parties to the position where they would have been had such Legal Challenge not occurred. Except for the mitigation measures set forth in this paragraph, Contractor shall have no further claim for any damages, compensation, reimbursement or recovery from HPTE, whether at law, at equity, or otherwise, with respect to any unrecovered Capitalized Cost amounts in the event of a Legal Challenge or otherwise. Contractor acknowledges that HPTE has separately bargained for the allocation of risk set forth in this Section 9.1(c), that Contractor's agreement to such allocation of risk is a material inducement to HPTE's execution of this Agreement, and that this Section 9.1(c) is not severable or otherwise subject to revision by a reviewing court without materially altering the parties' agreement. In the event that less than all of the Digital Signs shall be affected by a Legal Challenge, the above provisions shall be ratably and equitably adjusted for application to such circumstance. In the event of a Legal Challenge, if elected by Contractor (in writing to HPTE) in its sole discretion, HPTE shall defend such litigation. Contractor shall have the right to select the counsel to defend such Legal Challenge, subject to HPTE's reasonable consent. Any settlement must be made only with the prior written consent of HPTE if the settlement requires any payment or admission of fault on the part of HPTE. Contractor, if not named a party, may seek to intervene in such suit in order to defend its interests under this Agreement.

d. *Survival.* The provisions in this Article 9 survive expiration or termination of this Agreement for matters occurring or arising while this Agreement is in effect

e. *Offset for Insurance Proceeds.* Any claim for Losses payable by Contractor pursuant to this Article 9 shall be reduced by an amount equal to any insurance proceeds paid to HPTE with respect to the event giving rise to such Claim.

ARTICLE 10

COMPLIANCE WITH LEGAL REQUIREMENTS

10.1 General.

(a) *Compliance with Laws.* Contractor must comply with all applicable Laws in its performance of the Work and operation of the Digital Sign Network.

(b) *Taxes.* As between HPTE and Contractor, Contractor will be responsible for all applicable existing and future sales, consumer, use, possessory interest property tax, excise, personal property, transaction, nontitled use, employers' expense and other taxes, duties and

tariffs (whether direct or indirect), assessed against the import or export of machinery, equipment, materials and supplies for the Digital Signs. To the extent that a new tax is enacted after the Effective Date hereof that is applicable to the Digital Signs or performance of the Work and/or that is generally applicable to advertising signs or similar businesses within HPTE (or not generally applicable, and specific only to Contractor and the Digital Signs Network), Contractor will be granted a credit against Percentage Rent payable to HPTE in each calendar year equal to the amount of any such new tax actually paid by Contractor in each such calendar year and Contractor's liability for such new taxes shall not exceed the Percentage Rent. In such event, Contractor must provide written evidence of the payment of such tax.

(c) *Licenses and Authorizations.* Contractor must observe and comply with, and must cause its Subcontractors to observe and comply with, and obtain all licenses, certificates and other authorizations required by all applicable Laws for the performance of the Work and must give all notices pertaining thereto.

(d) *Disclosure Affidavit.* Contractor must execute and must cause all Subcontractors of the first tier (and other Subcontractors as may be required by applicable Law) to execute a Disclosure Affidavit (including disclosure of retained parties) in the form attached to this Agreement as Exhibit 4.

10.2 Federal Requirements.

(a) *Employment Practices.* In performing its Work under this Agreement, Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

(b) *Civil Rights.* Contractor must comply with, and the procedures Contractor utilizes and the Work Contractor provides under this Agreement must comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (1981), as amended, and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. ' ' 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. ' ' 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§793-794 (1981); Americans with Disabilities Act, 42 U.S.C. ' 12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* and all other applicable Laws.

(c) *Patriot Act Certification.* Contractor represents and warrants that neither Contractor nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other

list of persons or entities with which HPTE may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section, an “Affiliate” shall be deemed to be a person or entity related to Contractor that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Contractor, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

ARTICLE 11

SPECIAL CONDITIONS

11.1 Representations and Warranties. In connection with the execution and performance of this Agreement, Contractor represents and warrants that:

(a) it is appropriately licensed under all applicable Law to perform the Work required under this Agreement and will not perform Work for which a professional license is required by Law if Contractor is not appropriately licensed; and

(b) it is financially solvent; it and each of its employees, agents and Subcontractors are competent to perform the Work required under this Agreement; and is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement; and

(c) it will not knowingly use the services of any ineligible consultant or Subcontractor for any purpose in the performance of its Work under this Agreement; and

(d) to the best of its knowledge, its Subcontractors are not in default at the time this Agreement is signed, have not been considered by the Director within 5 years immediately preceding the Effective Date, to have been in default on any contract awarded by the State of Colorado or any agency thereof; and

(e) it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the work required; from its own analysis has satisfied itself as to the general nature of all things needed for the performance of this Agreement; has confirmed that the performance of this Agreement is feasible in accordance with all of its provisions and requirements, and it can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Agreement, subject to such additional site information that Contractor may obtain in the course of implementing the terms of this Agreement, such as, for example, Contractor determines actual soil conditions through borings in connection with preparing to install Digital Signs and performing its obligations hereunder.

(f) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination pursuant to Article 12.

11.3 Joint and Several Liability. If Contractor, or its successors or assigns, if any, is not a corporation and is not a limited liability company, but is instead comprised of more than one individuals or legal entities (or a combination of them), then under this Agreement, each and every obligation or undertaking in this Agreement to be fulfilled or performed by Contractor is the joint and several obligation or undertaking of each such individual or other legal entity. If Contractor is not so comprised, there shall be no such joint and several liability. If any person or entity other than Contractor executes a limited joinder to this Agreement, such person or entity shall be jointly and severally liable as to the undertakings set forth in such limited joinder.

11.4 Business Documents. At the request of HPTE, Contractor must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

11.5 Prohibited Conflicts.

(a) *No Personal Interest.* No member of the governing body of HPTE or other unit of government and no other officer, employee or agent of HPTE or other unit of government who exercises any functions or responsibilities in connection with the Work to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Colorado General Assembly and no board director of HPTE or HPTE employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit that arises from it.

(b) *No Conflict of Interest.* Contractor further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Work or have access to any confidential information, as described in Section 3.10 of this Agreement. If HPTE, by HPTE in her reasonable judgment, determines any of Contractor's work for others conflict with the Work Contractor is to render for HPTE under this Agreement, Contractor must terminate such other work immediately upon request of HPTE.

(c) *Federal Lobbying Restrictions.* If any federal funds are to be used to compensate or reimburse Contractor under this Agreement, Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. ' 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Contractor must execute a Certification Regarding Lobbying, which will be attached as an exhibit and incorporated by reference as if fully set forth here.

11.6 No Liability of Public Officials. Contractor and any assignee or Subcontractor of Contractor must not charge any official, employee or agent of HPTE personally with any liability or expenses of defense or hold any official, employee or agent of HPTE personally liable to them under any term or provision of this Agreement or because of HPTE's execution, attempted execution or any breach of this Agreement.

11.7 HPTE Representation and Warranty. In connection with the execution and performance of this Agreement, HPTE represents and warrants that it has the authority to execute and deliver this Agreement, and that such execution and delivery has been authorized by

necessary action of HPTE.

ARTICLE 12
EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND
EXCUSABLE EVENTS

12.1 **Defaults Defined.** Each of the following constitutes a default by Contractor under this Agreement (each, a “**Default**”), if not remedied within the notice and cure periods set forth in Section 12.2 hereof or as otherwise set forth in this Agreement:

- (a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to HPTE;
- (b) Contractor admits in writing its inability or unwillingness to pay its debts as they become due;
- (c) The breach of any material representation or warranty made by Contractor herein;
- (d) Contractor’s violation of federal or state laws;
- (e) Contractor’s failure to perform any of its obligations under this Agreement including, without limitation, the following:
 - (i) A material failure to perform the Work in accordance with the requirements of this Agreement;
 - (ii) Failure to pay HPTE amounts due in accordance with the terms of this Agreement;
 - (iii) Failure to correct Work that is defective within the earliest reasonable practical opportunity pursuant to Section 3.7;
 - (iv) Discontinuance of the Work for more than (fifteen) 15 consecutive days for reasons within Contractor’s reasonable control;
 - (v) Failure of Contractor or the Work to comply with a material term of this Agreement, including, but not limited to, the provisions concerning insurance, nondiscrimination and minority and women’s business enterprises commitment;
 - (vi) Failure to comply with the Installation Schedule, maintenance standards and schedule of availability set forth in Exhibits 1E, 1F and 5, respectively, subject to HPTE's obligation to cooperate in good faith and in a timely manner where required hereunder, to the Excusable Event provisions, and to any other provisions of this Agreement expressly providing for an extension of time for performance;

- (vii) Any change in majority ownership or control of Contractor without the prior written consent of HPTE, other than as a result of an acquisition, merger or consolidation of Contractor's business operations by or into a successor company, including as a result of an initial public offering; other transfers shall require the prior written consent of HPTE, which consent shall not be withheld so long as the transferee that succeeds to Contractor's business operations is an Approved Transferee ("**Permitted Transfer**"); for purposes of clarity, the admission of a minority owner, who does not acquire a controlling interest in Contractor, shall be deemed a Permitted Transfer;
- (viii) Any attempt by Contractor to assign, convey or transfer this Agreement or any interest herein without HPTE's prior written consent, excluding, however, in connection with a transfer to an Approved Transferee or in connection with a Permitted Transfer or grants of security interests or collateral assignments in the Digital Signs to a lender providing Permitted Lender Financing;
- (ix) Contractor's default under any other agreement it may presently have or may enter into with HPTE during the term of this Agreement. Contractor acknowledges and agrees that in the event of a default under this Agreement HPTE may also declare a default under any such other Agreements; and
- (x) Inability to perform the Work satisfactorily or pay the amounts due HPTE pursuant to this Agreement as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.

12.2 **Default and Remedies.**

In the event that either party has breached its obligations under the terms of this Agreement in connection with a particular Property, the non-defaulting party shall deliver written notice to the defaulting party (a "**Cure Notice**"), and said party may cure such failure within fourteen (14) days of receipt of such notice provided that for any non-monetary default, if a cure cannot reasonably be effected in fourteen (14) days, the defaulting party may continue such cure past fourteen (14) days from notice provided it commences such cure within fourteen (14) days from notice and thereafter diligently pursues such cure to completion. In the event that the non-defaulting party fails to cure such breach within the cure period set forth herein (a "**Default**"), then in addition to all other rights and remedies at law and in equity, the non-defaulting party shall have the right to terminate this Agreement with respect to the particular Property that is the subject of the breach. In addition, if HPTE shall fail to perform its obligations under this Agreement following notice and the expiration of the cure period described above, Contractor shall have the right but not the obligation to perform such obligations and to deduct from the next payments of Percentage Rent due under this Agreement Contractor's actual, reasonable out-of-pocket costs incurred by Contractor in performing such obligations.

12.3 **Suspension. *HPTE's Right to Suspend Work.*** HPTE may at any time reasonably request that Contractor suspend the installation of Digital Signs (or some portion of them) in connection with public way or utility work associated with another CDOT or HPTE project, or a temporary CDOT or HPTE special event, by giving 15 days' prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency; provided, however, that Contractor may promptly resume its installation of Digital Signs under the same terms and conditions as stated in this Agreement upon written notice by HPTE and Contractor shall be entitled to an equitable extension of the Term in connection therewith. No suspension of this Agreement is permitted to exceed the duration of such emergency, public way or utility work, or temporary CDOT or HPTE special event.

12.4 **Excusable Events and Schedule and Percentage Rent Adjustments.** Contractor will be granted an extension with respect to the dates set forth in the Installation Schedule attached as Exhibit 1D or other time schedules relating to performance of the Work set forth in this Agreement in relation to an Excusable Event only as described herein.

(a) *Adjustments in Schedule for Performance Relating to Excusable Event.* Contractor will be granted an extension in the Installation Schedule, or other time schedules relating to performance of the Work set forth in this Agreement only under the following circumstances: (a) a delay occurs in the progress of the Work as a result of one of the Excusable Events identified below, and (b) Contractor has complied with the terms and conditions of the following subsections:

- (i) Contractor, as soon as reasonably possible and in no event later than ten (10) days after the date upon which Contractor has knowledge of the Excusable Event, notifies HPTE in writing of the occurrence of the event and the approximate number of days Contractor expects to be delayed as a result of such event; and Contractor makes a written request for an extension of time to HPTE within five days after the cessation of the Excusable Event specifying the number of days Contractor believes that its activities will in fact be delayed as a result of the event. Contractor will not be entitled to any extension in schedule for any period of time prior to the date on which Contractor gives notice to HPTE of the relevant Excusable Event.
- (ii) Contractor can demonstrate, to the reasonable satisfaction of HPTE, that the activity claimed to have been delayed was in fact delayed (or will be delayed) by the Excusable Event, and that the delay in such activity will result in a delay in the progress of the Work.
- (iii) The initial notice provided by Contractor under subsection (i) above must describe the efforts that have been (or will be) undertaken by Contractor to overcome or remove the Excusable Event and to minimize the potential adverse effect on the time for performance of the Work resulting from such Excusable Event.

(b) *Adjustments in Schedule for Performance Relating to HPTE Delay.* If the applicable Governmental Authority does not process and issue a permit for the installation of a Digital Sign within thirty (30) days of Contractor's submission of a complete application for the Permits therefor, Contractor will be entitled to an extension in the Installation Schedule and the Installation Deadline for such Digital Sign of one day for every day between such thirtieth (30th) day and the date on which such Governmental Authority actually issues such Permits. Further, if the applicable Governmental Authorities issue a substantial number of Permits within a very short time (for example, twenty permits in a single week), HPTE and Contractor shall negotiate in good faith to determine and agree upon in writing what additional extension to the Installation Deadline may be appropriate, subject to Contractor's reasonably establishing that such substantial issuance of such Permits materially impairs Contractor's ability to comply with the Installation Deadline such as, for example, due to the Ad Panel manufacturer's need to process such a large order of signs.

(b) *Compliance is Prerequisite to Adjustment Relating to Excusable Event.* Compliance with this Section 12.4 is a condition precedent to receipt of an extension in Contractor's time for performance of the Work (including, without limitation, an adjustment to the Installation Deadline. In the event of a failure to comply with this Section 12.4, Contractor will not be entitled to an extension of time for performance of the Work (including, without limitation, an adjustment to the Installation Deadline). Upon satisfaction by Contractor of the terms and conditions in Section 12.4(a) or (b), if Contractor is seeking a schedule adjustment, HPTE and Contractor will use good faith efforts to agree on the extent to which the Work has been delayed on account of an Excusable Event as provided and such determination must be confirmed in writing signed by both parties. If Contractor does not agree with such determination, it may dispute HPTE's decision in accordance with Article 7.

(c) *Excusable Events.* "**Excusable Event**" shall mean any of the following acts, events, conditions or occurrences to the extent that the same are beyond Contractor's reasonable control, are not caused by Contractor or its Subcontractors, could not have been either foreseen or avoided by the exercise of due diligence and which has an adverse effect on Contractor's ability to perform its obligations hereunder or, with respect to events described in Section 12.4(d)(ii) below, which has an adverse effect on visibility or existence of Ad Panels:

- (i) Acts of God, fires, explosions, floods, acts of national or international terrorism (as reasonably determined by HPTE), earthquakes, hurricanes, tornadoes, other severe storm damage causing power outages, epidemics, civil disturbances, war, riots, sabotage strikes/lockouts/labor disputes (but only to the extent not targeted at Contractor or Subcontractors), unforeseen, materially adverse soil conditions, and unanticipated environmental remediation, to the extent any such event prevents Contractor from installing the Digital Signs or, after such installation, from operating such Digital Signs, for a period of more than thirty (30) days;
- (ii) the occurrence of a Change in Law, including but not limited to any temporary restraining order, preliminary injunction or permanent injunction, that prohibits the installation or operation of any Digital Signs,

or Contractor's ability to sell advertising for placement on Ad Panels, or a suspension described in Section 12.3; and

None of the foregoing events shall be deemed an Excusable Event to the extent that performance of the Work would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor (such as, for example, by submitting an incomplete or inaccurate application), the Subcontractors or any other person for whom they may be liable. In the event of an Excusable Delay, Contractor will be entitled to an extension in the Installation Schedule and the Installation Deadline for such Digital Sign.

(d) *Rights Limited.* The rights and remedies set forth in this Section 12.4 shall be Contractor's in the event of an occurrence of an Excusable Event. Contractor hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against HPTE on account of an Excusable Event. or the failure of any Governmental Authority to issue any Permits for the issuance of a Digital Sign within thirty (30) days of Contractor's submission of a complete application for the Permits therefor.

12.5 Default by HPTE or Inability to Perform. In the event that HPTE defaults in, or is otherwise unable to perform any of its obligations under this Agreement, HPTE shall have the same notice and cure period rights applicable to a Default by Contractor under Section 12.2 above, depending on the nature of the default or non-performance. Contractor's sole remedies for any such default or non-performance, however, shall be either (i) injunctive relief, in the event HPTE default involves HPTE's performance of an action that is not permitted under this Agreement; (ii) specific performance, in the event that the default involves HPTE's failure to perform an action required under this Agreement (unless a Legal Challenge prevents such performance, or a portion thereof, in which case the specific performance right shall apply to all actions that HPTE has the ability to perform), or (iii) the right to terminate this Agreement.

12.6 Termination by Contractor. With respect to any particular Property that is the subject of this Agreement, in the event that, in Contractor's sole opinion with respect to any of the Digital Signs; (a) Contractor is unable to secure or maintain any required Permits; (b) federal, state or local statute, ordinance regulation or other governmental action precludes or materially limits use of the Property for outdoor advertising purposes; (c) the Digital Signs on the Property become entirely or partially obstructed, impaired, or destroyed due to any cause beyond the control of HPTE, including, without limitation, any obstruction by an object or vegetation on any neighboring property; (d) there occurs a diversion of traffic from, or a change in the direction of, traffic past the Digital Signs; (e) Contractor is prevented from maintaining electrical power to the Property or illuminating the Digital Signs; (f) the continued maintenance/operation of the Digital Signs is impractical or uneconomical due to engineering, architectural, construction or maintenance circumstances which will require structural improvements to any of the Properties; or (g) maintenance will be hampered or made unsafe due to conditions caused by nearby properties, land uses, or utilities, then Contractor shall, at its option, have the right to terminate this Agreement with respect to the affected Property (but not with respect to any non-affected Property) upon thirty (30) days' notice in writing to HPTE. Further, in the event that the issues set forth in (c) or (e) above are caused by or in connection with the acts or omissions of HPTE or

CDOT, HPTE shall reimburse Contractor for the unamortized Capitalized Costs of the Digital Signs.

12.7 Termination by HPTE. HPTE is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, Courts, the Transportation Commission and the HPTE Board of Directors. On or after the 1st day of Lease Year 6, HPTE shall have the right, upon not less than sixty (60) days' prior written notice to Contractor, (a) to terminate this Agreement together with all of the Subleases in their entirety if CDOT determines, in writing to HPTE (a copy of which shall be delivered by HPTE to Contractor), that this Agreement ceases to further the public interest of the State of Colorado with respect to all of the Properties which subject to Grants of Lease, or (b) to terminate any applicable Sublease solely with respect to any Digital Sign(s) thereunder which are preventing or materially impairing use of the Property(ies) upon which it (or they) are located for highway purposes, as determined in writing by CDOT to HPTE (a copy of which shall be delivered by HPTE to Contractor). Notwithstanding the immediately preceding sentence, in the event of any such termination of this Agreement and/or any Subleases by HPTE, as a condition precedent to the effectiveness of such termination, HPTE shall concurrently deliver to Contractor, a refund of the then-unamortized Capitalized Costs for all of the Digital Signs thereunder.

ARTICLE 13 MISCELLANEOUS

13.1 Entire Agreement. This Agreement, the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties, and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement. This Agreement supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Work and the Agreement. No party is an intended third party beneficiary of this Agreement.

13.2 No Collateral Agreements. Contractor acknowledges that, except only for those representations, statements or promises expressly contained in this Agreement and any exhibits attached to it and incorporated in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by HPTE, its officials, agents or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Work to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

13.3 No Omissions. Contractor acknowledges that Contractor was given ample opportunity and time and was requested by HPTE to review thoroughly all documents forming

this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

13.4 Counterparts. This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

13.5 Amendments. No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by HPTE and Contractor.

13.6 Approval. Whenever in this Agreement Contractor is required to obtain prior written approval, the effect of any approval that may be granted pursuant to Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

13.7 Governing Law and Jurisdiction. This Agreement is governed as to performance and interpretation in accordance with the Laws of the State of Colorado, without regard to conflicts of law principles. Contractor irrevocably submits itself to the original jurisdiction of the federal and state courts located within the state of Colorado, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Each of HPTE and Contractor hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Agreement, Contractor's use or occupancy of the Property, and any claim of injury or damage related to Contractor's demise, use or occupancy of the Property.

13.8 Severability. If any provision of this Agreement is held to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any Law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it, except to the extent an essential element of this Agreement is held to be or is in fact invalid, illegal, inoperative or unenforceable.

13.9 Assignment. This Agreement shall be binding upon heirs, executors, personal representatives, successors and assigns for the parties hereto and HPTE agrees to notify Contractor of any change of (i) ownership of any of the Property(ies), or (ii) HPTE's mailing

address within fifteen (15) days of such change. HPTE agrees to hold Contractor harmless from any action resulting from failure to provide said notice. HPTE shall not assign its interest under this Agreement or any part thereof except to a party who purchases the underlying fee title to any of the Properties, and as a condition to such sale, HPTE shall cause the purchaser of such fee title to enter into a direct lease with Contractor for the Property for the remainder of the Term, on the same terms and conditions set forth in this Agreement, modified only to reflect that the subject property is a single site and, if applicable, that the successor HPTE is not a governmental entity (e.g., the provisions of Section 4.3 would not be applicable). Contractor shall not assign its interest under this Agreement or any part thereof without the prior written consent of HPTE, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, HPTE's consent shall not be required in connection with an assignment of this Agreement to an entity that controls, is controlled by, or is under common control with, Contractor, to a party who purchases title to the subject Digital Signs, or to an entity that merges with Contractor and becomes the surviving entity following such merger. Upon any permitted assignment under this Section, and further upon the assignor party delivering to the other party a fully-executed assignment and assumption agreement by the assignee whereby the assignee expressly assumes all of the assignor party's rights, duties, obligations responsibilities, and liabilities under this Agreement, the assignor party shall be fully and finally released from any of its duties, obligations, responsibilities, and liabilities under this Agreement accruing from and after the effective date of such assignment

13.10 Estoppel Certificate. Within ten (10) days after written request therefor by HPTE or Contractor, the other party agrees as directed in such request to execute an estoppel certificate, binding upon such other party, certifying (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Agreement as modified is in full force and effect), (b) the dates to which Percentage Rent has been paid, (c) that Contractor is in the possession of the Property if that is the case, (d) that, to such other party's actual knowledge, the requesting party is not in default under this Agreement, or, if such other party believes that the requesting party is in default, the nature thereof in detail, and (e) that, to such other party's actual knowledge, the requesting party has no offsets or defenses to the performance of its obligations under this Agreement (or if such other party believes there are any offsets or defenses, a full and complete explanation thereof).

13.11 Waiver. Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to Law or that would result in or promote the violation of any Law. Whenever under this Agreement HPTE by a proper authority waives Contractor's performance in any respect or waives a requirement or condition to either HPTE's or Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times HPTE may have waived the performance, requirement or condition. Such waivers must be provided to Contractor in writing.

13.12 [Intentionally Deleted]

13.13 Force Majeure. Any obligation of HPTE or Contractor hereunder (other than the payment of Percentage Rent) which is delayed or not performed due to acts of God, strike, riot,

war, weather, failure to obtain labor and materials at a reasonable cost, or any other reason beyond the control of HPTE or Contractor, as applicable (collectively, “**Force Majeure**”), shall not constitute a default hereunder and shall be performed within a reasonable time after the end of such cause for delay or nonperformance.

13.14 Independent Contractor Status.

(a) This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and HPTE. The rights and the obligations of the parties are only those expressly set forth in this Agreement. Contractor must perform under this Agreement as an independent Contractor and not as a representative, employee, agent, or partner of HPTE.

(b) Nothing provided for under this Agreement constitutes or implies an employer-employee relationship between HPTE and Contractor (or its employees, Key Personnel and Subcontractors) such that:

- (i) HPTE will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with Contractor performing the Work required under this Agreement;
- (ii) Contractor is not entitled to membership in any pension fund, group medical insurance program, group dental program, group vision care, group life insurance program, deferred income program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of HPTE; and
- (iii) HPTE is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

13.15 Notices. Notices provided for in this Agreement, unless expressly provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to HPTE: _____

and _____

and _____

With a copy to: _____

Attention: _____

If to Contractor: [INSERT]

With a copy to: [INSERT]

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Section 13.15. Notices delivered by mail are considered received three days after mailing in accordance with this Section 13.15. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

13.16 Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 13469b), and the State’s risk management statutes, §§24-30-1501m *et seq.* C.R.S.

13.17 Rights Cumulative. The rights and remedies available to each party as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such party at law and/or in equity, and in addition, any specific right or remedy conferred upon or reserved to such party in any provision of this Agreement shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

13.18 Authority. Each of HPTE and Contractor represent to the other that the individuals executing this Agreement on behalf of such party has full power and authority to enter into, execute and deliver this Agreement and that no further action, consents or approvals are required as a condition to such party’s performance of its obligations under this Agreement.

[Signature page follows.]

HPTE:

THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE,

a(n) _____

By: _____

Name: _____

Title: _____

Contractor:

OUTFRONT/BRANDED CITIES COLORADO, LLC,

a Delaware limited liability company

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED TO BY:

COLORADO DEPARTMENT OF TRANSPORTATION,

a(n) _____

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me this _____
day of _____, 2017.

Notary Public

EXHIBIT 1A

Form of Lease between CDOT and HPTE for the Digital Sign Sites

[To be inserted]

EXHIBIT 1B

Form of Sublease between HPTE and Contractor for the Digital Sign Sites

[To be inserted]

EXHIBIT 1C

Maintenance and Operation Standards

Note that all standards described in this Exhibit 1C apply 24 hours per day, 7 days per week, 365 days until the termination or expiration of this Agreement.

Maintenance and Operation Standards Applicable to All Digital Signs

A. Contractor must professionally maintain and repair all Digital Signs in a first-class manner. Maintenance requirements for Digital Signs include the following:

Contractor will develop and install hardware and software for a computerized inventory and information sharing system on the Digital Sign Network, which system will first-class technology acceptable to HPTE. If any special equipment is required, Contractor will supply HPTE with a computer, which will be linked to a high availability server at Contractor's Data Center through a dedicated and secure connection. The system will have a mapping capability, allowing HPTE to instantly locate any structure.

Contractor must inspect the Digital Signs as necessary, no less than once per year (or as required under applicable Laws), for structural integrity (footing, seams, welds, loose bolts, bent/broken frame or panel, leaning structure, sign face damage, burned out LED lights).

Contractor must maintain surfaces adjacent to and underlying all Digital Signs, keeping such surfaces in a safe, clean, attractive and sanitary condition and in good order and repair.

12. Contractor must perform a visual electrical inspection as necessary, no less than three times per year, with periodic testing of electrical systems after installation as necessary, no less than once every four years thereafter, and shall check the lighting system at night as necessary, no less than twice per month at half month intervals.

Maintenance Standards Applicable to Digital Signs

A. Contractor must regularly clean, maintain and, and must diligently repair, the exterior of the Digital Signs and must remove therefrom all unauthorized posters, graffiti. Contractor's maintenance obligations include repairs and maintenance to Digital Signs necessitated by vandalism.

B. If HPTE determines work is required to eliminate imminent physical danger to the public, or for other reasons of public safety requiring emergency response, then it may carry out such work immediately and give notice of the same forthwith to Contractor and HPTE may recover its reasonable costs from Contractor, provided that the work is not caused by CDOT, HPTE or their respective employees, agents or contractors.

EXHIBIT 1D
Installation Schedule
(Phase I and Phase II)
[To be inserted]

EXHIBIT 1E

Description of Digital Signs, Including Minimum Design Specifications

Contractor shall construct all Digital Signs in compliance with the then-applicable laws, rules and regulations governing outdoor advertising in Colorado. These legal requirements include, among others:

- Signs located in areas zoned for commercial or industrial uses by law prior to January 1, 1970, shall have a maximum area of 1200 square feet visible in any one direction of travel, a maximum sign face height of 30 feet, and a maximum sign face length of 60 feet.
- Signs located in areas zoned for commercial or industrial uses on or after January 1, 1970, and located along non-interstate routes, shall be no larger than 150 square feet and be located within one thousand feet of an industrial or commercial building.

These requirements, along with others, can be found in the Rules Governing Outdoor Advertising in Colorado.

In addition, the Digital Signs shall comply with those requirements found in Rule 12.00, 2 CCR 601-3, titled “Off-Premise CEVMS Advertising Devices” or similar rules or law, as may be amended from time to time. With regard to design, these requirements include, among others:

- prohibitions of CEVMS being within 1,000 feet of other CEVMS;
- the use of sufficient safeguards to prevent unauthorized access, use or hacking of CEVMS and related technology, including infrastructure, hardware, software and networks, by unauthorized users;
- prohibition on the use of animated or moving parts;
- prohibition on the use of any inter-active component or medium; and
- the use of automatic dimming technology to ensure the CEVMS brightness level never exceeds three tenths (0.3) Footcandles above ambient light.

These design specifications are subject to change through passage or adoption of law or rule or grant of variance. Accordingly, all laws and rules described herein are subject to change through amendment.

EXHIBIT 1F

Digital Sign Sites

[To be inserted]

EXHIBIT 2

List of Key Personnel and Schedule of Availability

[To be inserted]

Key Personnel:

Schedule of Availability:

EXHIBIT 3

Contractor's Advertising Policy

Contractor hereby agrees not to display the following categories of advertisements or other content on the Signage, unless previously approved in writing by HPTE:

1. false, misleading, or deceptive;
2. libelous or defamatory;
3. promotes unlawful or illegal products, services or activities;
4. infringes on any copyright, trade or service mark, patent, trade secret or other intellectual property right of any person or entity;
5. implies or declares an endorsement by CDOT or HPTE of any product, service or activity, except upon the written consent of CDOT and/or HPTE, as applicable;
6. is obscene, pornographic, or sexually-explicit material, including, but not limited to, the depiction of sexually explicit nudity, sexual conduct, or sexual excitement**;
7. promotes or depicts tobacco or tobacco-products, or their use, or advertises entities whose business is substantially derived from the sale of tobacco or tobacco products;
8. promotes or depicts marijuana or marijuana-related products or services;
9. promotes or depicts alcoholic beverages or the use of alcoholic beverages if such advertisement or promotional material is within a 500-foot radius of a school up through the level of high school, a house of worship or a playground (other than a playground located adjacent to a linear park that is more than one mile in length and is located within the public way);
10. advertises entities whose business is substantially derived from the sale of firearms;
11. supports or opposes a political message, or a public issue or cause;
12. advocates imminent lawlessness or violent action, or contains graphic depictions of violence; or
13. supports or opposes a religion or religious denomination, creed, tenet or belief, atheism or agnosticism, or that contains a religious message, symbol or endorsement.
14. The following non-Colorado tourist destinations:
 - a. Ski resorts
 - b. Wine regions
 - c. State parks
 - d. Gambling destinations or casinos.

** The terms "sexually explicit nudity", "sexual conduct", and "sexual excitement" have the same meanings herein as in C.R.S. §18-7-501 as such law may be amended, modified or supplemented. The term "obscene" has the meaning set forth in C.R.S. §18-7-101(2) and as such law may be amended, modified or supplemented.

EXHIBIT 4

Form of Disclosure Affidavit

[To be inserted]

EXHIBIT 5

Form of Performance and Payment Bond

**State of Colorado
Department of Transportation**

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Outfront/Branded Cities Colorado LLC of the County of Denver, in the State of Colorado as Principal, and _____ of _____, in the State of _____ as surety, are held and firmly bound unto the **STATE OF COLORADO**, in the sum of _____ THOUSAND DOLLARS AND ZERO CENTS (\$_____.00), with interest thereon at the rate of eight percent (8%) per annum until paid, in good and lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the obligation is that the Principal and the State of Colorado Department of Transportation acting by and through the High Performance Transportation Enterprise, a government owned business and a division of the Colorado Department of Transportation, have entered into that certain contract, dated _____ (the "Contract") for the design, manufacturing, assembly, engineering, procurement, installation, construction, programming, marketing, maintenance, operation, removal and dismantlement of a coordinated state-wide digital sign program and network on properties owned by the Colorado Department of Transportation, including public service messaging and emergency communications services (the "Digital Sign Network"), at no cost to HPTE, in exchange for Principal placing advertising on and sharing in certain revenues from such Digital Sign Network, in accordance with the terms of the Contract and all other applicable Laws (as defined in the Contract). This Performance and Payment Bond is being issued subject to the terms of Section 3.16 of the Contract and covers the total design, manufacturing, assembly, engineering, procurement, construction costs and payment of the Percentage Rent for the approved Digital Sign(s) located at _____ in _____ County in the State of Colorado (the "Approved Digital Sign(s)").

NOW THEREFORE, if the said Principal shall at all times duly and faithfully discharge its, his or their duties under the Contract to construct the Approved Digital Sign(s) covered hereunder and shall duly and faithfully perform such construction thereof, and shall and will indemnify and save harmless the State of Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all direct damages or loss which the said State of Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the uncured default of the Principal or anyone acting for him as sub-contractor or otherwise in the construction of the Approved Digital Sign(s) under the Contract, or by reason of any failure on the part of said Principal, his agents, servants or employees, his sub-contractor or sub-contractors, or any of them, in the construction of the Approved Digital Sign(s) under said Contract or any portion therefor, or by the uncured default of the Contractor to make all Percentage Rent payments as required under the Contract, or by these presents shall become void, otherwise to be and remain in full force and effect.

THE STATE OF COLORADO shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said Principal under the terms of the Contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the Principal made to the surety or sureties in application for this Performance and Payment Bond, or otherwise, shall be read into or be a part of this Performance and Payment Bond or binding in any way on the obligee herein.

No assignment by Principal to surety of the proceeds of such Contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said Contract, against the proceeds thereof.

No extension of time of performance under said Contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

This Performance and Payment Bond shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

IN WITNESS WHEREOF, We have hereunto set our hands and seals at _____ the day and date above written.

Contractor: _____ **(Contractor Name)**

Sign Name: _____

Type Name: _____

Surety Co.:

Address:

ATTEST:

Bonding Agent: _____

Sign Name: _____

Type Name: _____

Address: _____

(Title)

Approved by the STATE OF COLORADO, Department of Transportation, This _____ day of _____, A.D. _____.

By

Joshua Laipply, P.E., Chief Engineer, Department of Transportation

SUBLEASE

BETWEEN

**THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE,
a government owned business and a division of the Colorado Department of Transportation,
as "SUBLANDLORD"**

AND

**OUTFRONT/BRANDED CITIES COLORADO, LLC,
a Delaware limited liability company,
as "SUBTENANT"**

Sublessor Initials _____

Sublessee Initials _____

THIS SUBLEASE AGREEMENT (this “**Sublease**”) is made this ___ day of _____ 201_ (the “**Effective Date**”), by and between **THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**, a government owned business and a division of the Colorado Department of Transportation, (“**Sublandlord**”), and **OUTFRONT/BRANDED CITIES COLORADO, LLC**, a Delaware limited liability company (“**Subtenant**”), as acknowledged by the **COLORADO DEPARTMENT OF TRANSPORTATION** (“**Owner**”).

RECITALS

WHEREAS, Owner possesses all of the rights, title, and interest in and to certain real property in the State of Colorado which are described in Exhibit “A” attached hereto and made a part hereof [DETAIL THE EXTENT OF SUCH CDOT RIGHTS IN EXHIBIT “A”] (the “**Property**”);

WHEREAS, pursuant to that certain Coordinated Digital Sign Program Agreement (the “**Agreement**”) by and between Sublandlord and Subtenant, as acknowledged by Owner, on or about [_____], Owner, Sublandlord, and Subtenant mutually agreed that Subtenant shall possess the exclusive right to design, manufacture, assemble, engineer, procure, erect, install, construct, place, program, market, maintain, operate, service, refurbish or replace (as applicable), and remove (the above-grade portions) the Digital Sign on the Property;

WHEREAS, pursuant to the Agreement, Owner and Sublandlord entered into a [lease] dated [_____] in connection with the Subleased Premises, a copy of which is attached hereto as Exhibit “B” and made a part hereof (the “**Lease**”); and

WHEREAS, pursuant to the Agreement, Sublandlord and Subtenant desire to enter into this Sublease in connection with the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. The recitals set forth above and the terms of the Agreement are hereby incorporated herein by this reference. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
2. Sublandlord hereby subleases and grants exclusively to Subtenant the exclusive use of the Subleased Premises (with free [limited] access over and across the [same] or [the areas identified in Exhibit B attached hereto and incorporated herein]) for the purpose of designing, manufacturing, assembling, engineering, procuring, erecting, installing, constructing, placing, programming, marketing, maintaining, operating, servicing, refurbishing or replacing (as applicable), and removing [__(_)] [single/double-faced] digital sign(s), including supporting structures, illumination facilities and connections, back-up panels, service ladders and other appurtenances and ancillary equipment (collectively, inclusive of such sign(s), the “**Digital Sign**”). Sublandlord hereby grants to Subtenant the exclusive right during the Term (as defined below) to sell and place advertising on the Digital Sign subject to the Agreement. If any keys, access cards or other access devices are required in order to access the Property, Sublandlord will provide them to Subtenant upon the execution of this Sublease [or upon _____]. Sublandlord may require that, absent exigent circumstances, persons using such keys, access cards and/or other access devices submit to and pass a background check before accessing the Property. Subtenant must comply with the access and notice (absent exigent circumstances) requirements under Section 4.3(d) of the Agreement to enter the Property for any purposes described in this Sublease. (Access will be negotiated on a site-specific basis. Key cards may be issued, there will need to be a contact person for CDOT listed, background checks may be required.)
3. For the purposes of this Sublease, the “**Subleased Premises**” shall consist of the area where the supporting structure of the Digital Sign [is/are] affixed to the Property, together with the surrounding area and the airspace above the same, as more particularly described on Exhibit “C” attached hereto and made a part hereof.
4. Sublandlord grants to Subtenant and/or its agents and contractors the right to vehicular and pedestrian ingress and egress to and from the Digital Sign over and across the Property and any other property leased or controlled by Sublandlord for (i) all purposes reasonably necessary for the erection, installation, construction, placement, programming, maintenance, operation, servicing, refurbishment or replacement (as applicable), and removal of the Digital Sign , (ii) providing or establishing electrical power to the Digital Sign at Subtenant’s sole expense, and (iii) the placement of incidental and ancillary equipment thereon.
5. The term of this Sublease shall commence on the Effective Date hereof and automatically expire on the expiration or earlier termination of the Agreement in accordance with the terms set forth therein, or the earlier termination of this Sublease in accordance with the terms set forth herein (the “**Term**”) commencing on the first day of the calendar month immediately following the date on which construction of the Digital Sign is completed (the “**Commencement Date**”). Each full, consecutive twelve (12) month period of the Term commencing on the Commencement Date and on each anniversary thereof is hereinafter referred to as a “**Sublease Year**”. The Commencement Date shall be mutually agreed upon (in writing or via email) by the parties promptly following the occurrence thereof; provided that the failure by either party, or both parties, to agree upon the Commencement Date shall not in any way or manner affect the rights or obligations of either party hereunder. In the event a Legal Challenge occurs in connection with the rights awarded to Subtenant hereunder and/or under the Agreement (a) during the installation phase, the Subtenant may elect to defer the further installation of the Digital Sign until such Legal Challenge is resolved and such installation may resume, or (b) after such installation phase and the Legal Challenge enjoins the further operation of the Digital Sign, then the Term of this Sublease shall be ratably extended

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based on the length of any such deferral or injunction. In either such event, any other impacted dates for performance shall be adjusted accordingly and the parties shall execute an amendment to this Sublease to memorialize such adjusted dates.

6. Subtenant shall pay to Sublandlord an amount equal to forty percent (40%) of Gross Revenues (the “**Percentage Rent**”), subject to Section 4.8 of the Agreement with respect to any applicable removal costs in connection with the Digital Sign. “**Gross Revenues**” shall mean all revenues actually received by Contractor from the sale of advertising on the Digital Sign (whether marketed directly by Contractor, or through an advertising agency or a media buyer), *less* (i) any commercially reasonable advertising commissions paid by Contractor to third parties that are not employees or Affiliates of Contractor, not to exceed 16.67%, and (ii) the repayment to Contractor of the Capitalized Costs in connection with the Digital Sign, straight-line amortized over a period of seven (7) years beginning on the Commencement Date. Notwithstanding the foregoing, prior to completion of construction of the Digital Sign and during the entire period in which no advertising copy is displayed on the Digital Sign by Subtenant, the Percentage Rent shall be Ten Dollars (\$10.00), together with a mutually agreed upon (via email or in writing) charge for the fair market rental value of the actual ground space upon which the Digital Sign will be located (which, the Parties hereby acknowledge, is not expected to exceed Twenty Dollars (\$20.00) per month). Following the completion of construction of the Digital Sign, all such amounts paid under the immediately preceding sentence shall be credited back to Subtenant (reducing the amount of the Percentage Rent). Payment of Percentage Rent shall be limited to one (1) check per payment payable to no more than two (2) payees. The Percentage Rent which is due and payable by Subtenant to Sublandlord under this Section 6 shall be in lieu of, and not in addition to, any “Percentage Rent” referenced under Section 6.1 of the Agreement.
7. Sublandlord warrants that: (i) Sublandlord is a tenant of the Property pursuant to the Lease, which is and shall remain good and valid at all times during the entire Term; (ii) the Lease will continue for the entire Term; (iii) Sublandlord has obtained all necessary consents from Owner and anyone else needed for Sublandlord and Subtenant to enter into this Sublease; (iv) this Sublease does not conflict with any of the terms of the Agreement or the Lease; (v) Sublandlord will pay all rent and any other amounts under the Lease in a timely manner and take all necessary actions to ensure that such Lease and this Sublease are and remain in full force and effect during the entire Term; (vi) Sublandlord has legal use of the Subleased Premises; and (vii) Sublandlord has full authority to execute this Sublease and to grant Subtenant all of the rights contained herein.
8. Sublandlord and Subtenant shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the erection, installation, construction, placement, maintenance, operation, servicing, refurbishment or replacement (as applicable), and removal of the Digital Sign (collectively, the “**Permits**”). Sublandlord shall sign any documentation required with respect to obtaining such Permits, provided that Sublandlord shall incur no third party costs or expenses in connection therewith.
9. Subtenant shall, at its own expense, provide and keep in force all insurance as required under the Agreement.
10. This agreement is a Sublease (not a license). The Digital Sign on the Subleased Premises, and all sign(s), structure(s), imprints, improvements and appurtenances thereto placed on the Subleased Premises hereafter by or for Subtenant, its agent or predecessor and any and all Permits related thereto shall at all times remain the property of Subtenant. Subtenant shall remove the Digital Sign within one hundred eighty (180) days following the expiration or earlier termination hereunder of this Sublease (the “**Removal Date**”). When Subtenant removes the Digital Sign it shall completely remove the above grade portions of said Digital Sign and return the location to the condition it existed prior to installation of the Digital Sign. Notwithstanding the immediately preceding sentence, in the event of an earlier termination hereunder of this Sublease by HPTE pursuant to Section 12.7 of the Agreement, if the continued presence of the Digital Sign on the Property would impair or prevent the development or redevelopment of such Property by Owner, as evidenced by plans (copies of which have been delivered by Sublandlord to Subtenant via email or in writing), then upon not less than one hundred eighty (180) days’ prior notice from Sublandlord, Subtenant shall remove all of any subsurface infrastructure thereof (including, without limitation, any spread footings), provided that (i) Subtenant determines in its reasonable discretion that such removal is not likely to damage, compromise, or disturb any subsurface utility lines, improvements or items not associated with the Digital Sign and/or compromise the stability of any above-grade fixtures and/or elements on the Property; and (ii) all reasonably documented costs and expenses incurred by Subtenant in connection with such removal are reimbursed to Subtenant out of Gross Revenues (prior to the payment of Percentage Rent under Section 6 above). The future existence of below grade improvements shall not constitute continued occupancy of the Subleased Premises by Subtenant. If upon the expiration or earlier termination hereunder of the Term, the parties hereto are engaged in good faith negotiation of the terms of a renewal sublease, then Subtenant shall not be obligated to remove the Digital Sign from the Subleased Premises until thirty (30) days after the receipt of written notice from Sublandlord expressly stating that Sublandlord does not desire to continue such renewal negotiation. Neither Owner, Sublandlord nor anyone claiming by, through or under Owner or Sublandlord, shall acquire any rights in and to the software, technology or other intellectual property that is owned or licensed by Subtenant and used in connection with the Digital Sign.
11. In the event that all or any part of the Property is acquired or sought to be acquired by or for the benefit of any entity having or delegated the power of eminent domain, Subtenant shall, at its election and in its sole discretion, be entitled to: (i) contest the acquisition and defend against the taking of Subtenant’s interest in the Property; (ii) reconstruct the Digital Sign on any portion of the Property not being acquired, as reasonably approved by Sublandlord; and (iii) recover damages to and compensation for the fair market value of its leasehold and Digital Sign taken or impacted by the acquisition. No termination right set forth anywhere in this Sublease may be exercised by Sublandlord if the Property or any portion thereof is taken or threatened to be taken by eminent domain, or if the Subleased Premises is conveyed or to be conveyed to or for the benefit of any entity having the power of eminent

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domain.

12. In the event that, in Subtenant's sole opinion; (a) Subtenant is unable to secure or maintain any required Permits from any appropriate governmental authority; (b) federal, state or local statute, ordinance regulation or other governmental action precludes or materially limits use of the Subleased Premises for outdoor advertising purposes; (c) the Digital Sign on the Subleased Premises become entirely or partially obstructed, impaired, or destroyed, including, without limitation, any obstruction by an object or vegetation on any neighboring property; (d) there occurs a diversion of traffic from, or a change in the direction of, traffic past the Digital Sign; (e) Subtenant is prevented from maintaining electrical power to the Subleased Premises or illuminating the Digital Sign; (f) the continued maintenance/operation of the Digital Sign is impractical or uneconomical due to engineering, architectural, construction or maintenance circumstances which will require structural improvements to the Property; (g) maintenance Digital Sign will be hampered or made unsafe due to conditions caused by nearby properties, land uses, or utilities, then Subtenant shall, at its option, have the right to terminate this Sublease upon thirty (30) days' notice in writing to Sublandlord.
13. On or after the 1st day of Sublease Year 6, Sublandlord shall have the right, upon not less than sixty (60) days' prior written notice to Subtenant, (i) to terminate this Agreement together with this Sublease and all other existing subleases between Sublandlord and Subtenant if Owner determines, in writing to Sublandlord (a copy of which shall be delivered by Sublandlord to Subtenant), that the Agreement ceases to further the public interest of the State of Colorado with respect to all of the properties which are subject to subleases between Sublandlord and Subtenant, or (ii) to terminate this Sublease if the Digital Sign is preventing or materially impairing use of the Property for highway purposes, as determined in writing by Owner to Sublandlord (a copy of which shall be delivered by Sublandlord to Subtenant). Notwithstanding the immediately preceding sentence, in the event of any such termination of this Sublease by Sublandlord, as a condition precedent to the effectiveness of such termination, Sublandlord shall concurrently deliver to Subtenant, a refund of the then-unamortized Capitalized Costs for the Digital Sign hereunder.
14. Subtenant agrees to pay all utility costs used in conjunction with the Digital Sign.
15. It is the understanding of the parties that visibility of the Digital Sign to the traveling public is the essence of this Sublease. Sublandlord shall not cause nor permit Subtenant's Digital Sign to be obscured from visibility to the traveling public. Sublandlord grants Subtenant the rights to trim, cut, or remove brush, trees, shrubs, or any vegetation or remove any obstructions of any kind on the Property, or any other property leased or controlled by Sublandlord, which limit the visibility of the Digital Sign. Sublandlord shall cause Owner to comply with the following under the Lease **[Note to HPTE: these CDOT requirements need to be incorporated into the Lease]**: (i) Owner shall not to cause or permit visibility of all or any portion of the Digital Sign to the traveling public to be obstructed or obscured, and (ii) Owner shall, as soon as reasonably practicable, trim, cut, or remove brush, trees, shrubs, or any vegetation and remove any other obstructions of any kind on the Property or any other real property leased or controlled by Owner which limit the visibility of the Digital Sign. Further, in the event that Owner does not comply with such obligation under (ii) of the immediately preceding sentence, without limiting Subtenant's other rights and remedies hereunder or under the Agreement, Subtenant may complete the applicable work thereunder. The costs to trim, cut, or remove brush, trees, shrubs, or any vegetation, whether performed by Owner (for its reasonable third party costs) or Subtenant in accordance with this Section 15 above shall be borne by Subtenant. Sublandlord shall not do anything to be done to the Subleased Premises which will in any way interfere with Subtenant's use thereof.
16. Sublandlord warrants that if Subtenant shall pay the Percentage Rent provided for herein, Subtenant shall and may peaceably and quietly have, hold and enjoy use of the Subleased Premises during the Term. To this end, if at any time during the Term, Sublandlord fails to pay any lien or encumbrance affecting the Subleased Premises, including any past due real estate taxes, interest, penalties or rent due to Owner, and after receipt of Subtenant's written request to Sublandlord to pay said sums, Sublandlord fails to make such payment, Subtenant shall have the right, but not the obligation, to pay such amounts or any portion thereof. Subtenant may deduct any such payments and any additional related expenses including reasonable attorneys' fees, with interest thereon at the interest rate applicable to judgments under state law per annum from the date of payment, from the next succeeding installment(s) of rent until Subtenant has been fully reimbursed for such payments, interests and fees.
17. All Percentage Rent to be paid to Sublandlord pursuant to this Sublease and all notices to either of the party hereto shall be forwarded to the respective party at the address noted below such party's signature, or such other address set forth in a written notice by such party. Percentage Rent payments shall be deemed received by Sublandlord upon deposit by Subtenant with the United States Postal Service. In the event that Sublandlord shall send to Subtenant written notice requesting that Percentage Rent be forwarded to an address other than that listed below Sublandlord's signature, such new forwarding address shall not be effective until forty-five (45) days after Subtenant's receipt of such notice from Sublandlord.
18. This Sublease may not be modified except in writing and signed by Sublandlord and an authorized signatory of Subtenant.
19. This Sublease shall be binding upon heirs, executors, personal representatives, successors and assigns for the parties hereto and Sublandlord agrees to notify Subtenant of any change of (i) ownership of the Property or the Subleased Premises, or (ii) Sublandlord's mailing address within seven (7) days of such change. Sublandlord shall not assign its interest under this Sublease or any part thereof except to a party who purchases the underlying fee title to the Property. **Notwithstanding anything to the contrary contained herein, all of Sublandlord's right, title and interest in and to this Sublease shall be automatically assigned to Owner and Owner shall assume all obligations of the Sublandlord under the Sublease upon expiration or termination of Sublandlord's interest in**

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and to the Property and in such event, all future Percentage Rent payments shall be made directly to Owner. Subtenant's obligation to direct future Percentage Rent payments to the Owner shall commence ten (10) business days after receipt of written notice from Owner, sent by certified or registered mail or by overnight courier, confirming the expiration or termination of Sublandlord's interest in and to the Property, which shall be delivered by certified or registered mail or by overnight courier. Subtenant shall not assign its interest under this Sublease or any part thereof without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Sublandlord's consent shall not be required in connection with an assignment of this Sublease to an entity that controls, is controlled by, or is under common control with, Subtenant, to a party who purchases title to the subject Digital Sign, or to an entity that merges with Subtenant and becomes the surviving entity following such merger. Upon any permitted assignment under this Section, and further upon the assignor party delivering to the other party a fully-executed assignment and assumption agreement by the assignee whereby the assignee expressly assumes all of the assignor party's rights, duties, obligations responsibilities, and liabilities under this Agreement, the assignor party shall be fully and finally released from any of its duties, obligations, responsibilities, and liabilities under this Agreement accruing from and after the effective date of such assignment.

20. Subtenant, with the approval of Sublandlord, which approval shall not be unreasonably conditioned, delayed or withheld, may add any ancillary use to the Digital Sign, including but not limited to routing necessary underground lines and telecommunications devices.
21. Within twenty (20) days after written request therefor by Sublandlord or Subtenant, the other party agrees as directed in such request to execute an estoppel certificate, binding upon such other party, certifying (a) that this Sublease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Sublease as modified is in full force and effect), (b) the dates to which Percentage Rent has been paid, (c) that Subtenant is in the possession of the Premises if that is the case, (d) that, to such other party's actual knowledge, the requesting party is not in default under this Sublease, or, if such other party believes that the requesting party is in default, the nature thereof in detail, and (e) that, to such other party's actual knowledge, the requesting party has no offsets or defenses to the performance of its obligations under this Sublease (or if such other party believes there are any offsets or defenses, a full and complete explanation thereof).
22. In the event that either party is in default under the terms of this Sublease, the non-defaulting party shall deliver written notice to the defaulting party, and said party may cure such failure within fourteen (14) days of receipt of such notice provided that for any non-monetary default, if a cure cannot reasonably be effected in fourteen (14) days, the defaulting party may continue such cure past fourteen (14) days from notice provided it commences such cure within fourteen (14) days from notice and thereafter diligently pursues such cure to completion. In the event that the non-defaulting party fails to cure such breach within the cure period set forth herein, then in addition to all other rights and remedies at law and in equity, the non-defaulting party shall have the right to terminate this Sublease. In addition, if Sublandlord shall fail to perform its obligations under this Sublease following notice and the expiration of the cure period described above, Subtenant shall have the right but not the obligation to perform such obligations and to deduct from the next payments of rent due under this Sublease Subtenant's actual, reasonable out-of-pocket costs incurred by Subtenant in performing such obligations.
23. Concurrently with the execution of this Sublease, or at any other time upon request of the other, Sublandlord and Subtenant shall execute, acknowledge and deliver to the other a short form memorandum of this Sublease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.
24. The parties hereto have each carefully reviewed this Sublease and have agreed to each term set forth herein. No ambiguity is presumed to be construed against either party.
25. This Sublease shall be construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles. Any disputes under this Sublease shall be litigated in the local or federal courts located, and the parties hereby consent to personal jurisdiction and venue, in the County of Denver, Colorado. Each of Sublandlord and Subtenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Sublease, Subtenant's use or occupancy of the Premises, and any claim of injury or damage related to Subtenant's demise, use or occupancy of the Premises.
26. If any clause or provision of this Sublease is illegal, invalid or unenforceable under present or future Laws effective during the term of this Sublease, then and in that event, it is the intention of the parties hereto that the remainder of this Sublease shall not be affected thereby; and it is also the intention of the parties to this Sublease that in lieu of each clause or provision of this Sublease that is illegal, invalid or unenforceable, there shall be added as a part of this Sublease a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.
27. No amendment or modification of this Sublease shall be valid or binding unless expressed in writing and executed by Sublandlord and Subtenant.
28. Each of Sublandlord and Subtenant represent to the other that the individuals executing this Sublease on behalf of such party has full power and authority to enter into, execute and deliver this Sublease and that no further action, consents or approvals are required as a condition to such party's performance of its obligations under this Sublease.
29. Subtenant agrees to defend, indemnify and hold harmless the Sublandlord and Owner and any employees, agents, contractors, and officials of the Sublandlord and Owner against any and all damages, claims, liability, loss, fines, or

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expenses, including attorneys' fees and litigation costs arising out of the presence, disposal, release or clean-up of Hazardous Materials on, over or under the Property subject to this Sublease, if such Hazardous Materials were brought onto the Property by Subtenant or its employees, agents or contractors. The Subtenant shall also be responsible for all damages, claims and liability to the soil, water, vegetation, buildings or personal property located thereon as well as any personal injury or property damage caused by the Hazardous Materials the Subtenant or its employees, agents, contractors or official have brought onto the Property. "Hazardous Materials" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive including those substances which are defined as "hazardous substances," "hazardous materials," "hazardous wastes," (1) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (2) in the Hazardous Materials Transportation Act 49 U.S.C. § 1801 et seq.; (3) in any other federal, state or local governmental statutes, laws, codes, ordinances, rules and regulations; and (4) by common law decision, including asbestos and polychlorinated biphenyls.

30. The waivers of claims or rights, the releases and the obligations of Sublandlord and Subtenant under this Sublease to indemnify, protect, defend and hold harmless any parties shall survive the expiration or termination of this Sublease, and so shall all other obligations or agreements which by their terms survive expiration or termination of this Sublease.
31. In the event of a conflict between the terms and conditions of this Sublease and the terms and conditions of the Agreement, the terms and conditions of this Sublease shall govern.

[SIGNATURE PAGE FOLLOWS.]

Sublessor Initials _____

Sublessee Initials _____

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and year first above written.

FOR Sublandlord:

FOR Subtenant:

BY: _____

BY: _____

Title

Title

DATE: _____

DATE: _____

Acknowledged by:

OWNER: Colorado Department of Transportation

BY: _____

Title

DATE: _____

EXECUTED by the OWNER in the presence of

Who is hereby requested to sign as witness.

EXECUTED by the OWNER in the presence of

Who is hereby requested to sign as witness.

SUBLANDLORD'S MAILING ADDRESS:

SUBTENANT'S MAILING ADDRESS:

Street Address

Street Address

City

City

State

Zip

State

Zip

Telephone Number

Fax Number

Telephone Number

Fax Number

Sublessor Initials _____

Sublessee Initials _____

EXHIBIT "A"

Legal Description of the Property

[Insert]

Sublessor Initials _____

Sublessee Initials _____

EXHIBIT "B"

Copy of the Lease

[See Attached]

EXHIBIT "C"

Depiction of the Subleased Premises

[See Attached]

SUBLANDLORD ACKNOWLEDGEMENT

STATE OF)
)ss
COUNTY OF)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Owner ACKNOWLEDGEMENT

STATE OF)
)ss
COUNTY OF)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Subtenant ACKNOWLEDGEMENT

STATE OF)
)ss
COUNTY OF)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BRANDED CITIES DIGITAL NETWORK PROPOSAL

FREQUENTLY ASKED QUESTIONS

What was the procurement process for this opportunity?

The opportunity was first presented as a way to generate revenue through a sole source provider. Once it was clarified by the HPTE that the opportunity would need to go through a public process, it went through separate RFI, RFQ and RFP processes over a period of several years. After Branded Cities was selected by the HPTE through each such process, the contract was negotiated with HPTE, with the advice of its counsel through the Colorado Attorney General's office.

Are the proposed digital displays going to show moving or flashing copy?

No, all copy will remain static for a minimum of 8 seconds before instantly changing to the next static image.

Are the proposed digital network displays safe?

In prior circumstances around the country and state, FHWA and CDOT have found digital displays to be safe. In this proposal, the dwell time, or the amount of time a display is required to remain static, is double what is currently allowed by both the FHWA and CDOT.

Does the Consortium have measures in place to turn off the displays if one, or all, of the displays is hacked?

Yes, we have the ability to remotely turn any or all of the screens dark if anyone were to hack into our system. In addition, we have fire walls in place and monitor each display remotely through a network of webcams.

How can CDOT ensure appropriateness of the content displayed on the network?

The contract contains a list of specific restrictions on content, developed as result of legal analysis by both the state and Branded Cities' counsel, and designed to provide maximum control within the defensible constitutional framework of the First Amendment. The complete list may be found at Exhibit 3 to the contract, and includes prohibitions on the advertising of unlawful or illegal products and services, political advertising, firearms or religious messaging.

Resolution # TC-18-X-X

Acknowledging Program Agreement between the Colorado High Performance Transportation Enterprise and Branded Cities, Outfront Media, LLC, and Panasonic Corporation North America

Approved by the Transportation Commission on _____

WHEREAS, the Colorado Department of Transportation (“CDOT”) is an executive department of the State of Colorado (“State”); and

WHEREAS, pursuant to §43-1-106(8)(a) and (j), C.R.S., the Colorado Transportation Commission (“Commission”) is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state and to do all other things necessary and appropriate in the construction, improvement, and maintenance of the state highway and transportation systems; and

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”) pursuant to §43-4-806, C.R.S., as a government-owned business within CDOT with the business purpose to aggressively pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system and such innovative means of financing projects include, but are not limited to, public-private partnerships; and

WHEREAS, to further its business purpose, HPTE issued a Request for Information (“RFI”) for revenue generating opportunities on CDOT-owned property and received more than ten responses; and

WHEREAS, following the RFI process, and to further its business purpose, HPTE issued a Request for Proposals for network Based Revenue Generating Opportunities on CDOT-owned Property (“RFP”); and

WHEREAS, in response to the RFP, HPTE received one proposal which was from a consortium of Branded Cities, Outfront Media, LLC, and Panasonic Corporation North America (the “Consortium) in which the Consortium proposed to build a digital communication sign network (“DCSN project”) on CDOT-owned properties; and

WHEREAS, revenues generated by HPTE from the DSCN will be reinvested into the State’s surface transportation system and will also free up available funds to be used for the State’s surface transportation purposes; and

WHEREAS, pursuant to §43-1-210, CDOT has the authority to dispose of property owned by CDOT, or any portion therein, and has the legal ability to use CDOT-owned property for the DCSN project; and

WHEREAS, the Commission supports the business purpose of HPTE and supports efforts to develop innovate financing sources to improve the State’s transportation system; and

WHEREAS, the Commission has reviewed the draft Program Agreement between HPTE and the Consortium for the DCSN project and the accompanying sublease between HPTE and the Consortium (collectively the “Program Agreement”), and believes that the Program Agreement contains an appropriate process that will allow CDOT to determine whether it wants to lease a particular parcel of land to HPTE and contains the requirement that the Consortium obtain legal outdoor advertising permit(s).

NOW, THEREFORE, BE RESOLVED, the Transportation Commission acknowledges the Program Agreement between HPTE and the Consortium.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Transportation Commission authorizes CDOT to lease CDOT-owned property to HPTE for the purposes outlined in the Program Agreement.

By _____
Herman Stockinger, Secretary
Transportation Commission of Colorado

Date of Approval