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MEMORANDUM

TO: Mayor and City Council

FROM: Randy L. Ready 
Asst. City Manager

DATE: March 18, 2008

RE: Resolution No. 25, Series of 2008 - Entrance to Aspen Right of Way Amendment

SUMMARY AND REQUEST OF COUNCIL: Approval of the attached resolution is requested in order to formalize an amendment to the Entrance to Aspen Right of Way Easement (Exhibit A) to authorize construction of the bus lanes between Buttermilk and the Maroon Creek Roundabout pursuant to the May 2007 ballot question. City voters were asked to approve the following ballot question on May 8, 2007:

CITY OF ASPEN – BUS LANES BETWEEN BUTTERMILK AND ROUNDABOUT-
Shall the City Council be authorized to amend the Right-of-Way Easement that was conveyed in 2002 by the City of Aspen to the State of Colorado, Department of Transportation, for additional uses on the rights-of-way across City-owned property along State Highway 82, *only between Buttermilk and the Maroon Creek Roundabout*, to allow construction, operation and maintenance of a two-lane parkway and two exclusive bus lanes, or the already-permitted use for a two-lane parkway and a corridor for a light rail transit system?

63% of the voters approved the additional uses on the Right of Way that was originally conveyed to CDOT in 2002. Bus lane design has been completed. Construction funding from the county-wide ½ cent transit sales and use tax has been approved. A successful bidder has been identified and construction on the bus lanes is set to begin later this spring. City Council's approval of the amended Right of Way easement document will allow construction to proceed as scheduled, with project completion by December 1, 2008.

BACKGROUND AND PREVIOUS COUNCIL ACTION: The Entrance to Aspen Record of Decision and Memorandum of Understanding between the City and CDOT were completed in 1998. The Record of Decision authorized a two-lane parkway and transit system that generally follows the existing highway alignment except across the Marolt-Thomas property. "The transit component includes an LRT system that, if local support and/or funding are not available, will be developed initially as exclusive bus lanes" (ROD, p.1).

City voters approved municipal ballot question 2A in 1996, authorizing conveyance to CDOT of "necessary rights of way across City owned property, including the Marolt Property, acquired for

open space purposes, and the Thomas Property, acquired for transportation purposes, for a two lane parkway and a corridor for a light rail system.” Subsequently, City voters did not approve the use of the City-owned open space for a two-lane parkway and busway in 2001. City voters also did not approve improvements to the existing alignment in 2001.

The Record of Decision and MOU between CDOT and the City anticipated the need for CDOT to acquire a permanent easement on 8.6 acres of City open space in order to construct the Entrance to Aspen. 2.5 acres are to be restored to the Marolt-Thomas property (consisting of the existing alignment from Cemetery Lane to the Roundabout and the top of the cut and cover tunnel). The net acreage to be replaced was estimated to be 6.1 acres. In exchange for those 6.1 acres along with the 1.5 acres of Moore open space that CDOT acquired from Pitkin County in 1999 for the Roundabout, CDOT agreed to convey 31 acres of Mills Ranch property at the intersection of SH82 and Brush Creek Road. Page 3 of the MOU states that, “CDOT shall convey the replacement property from Mills Ranch as public open space by quitclaim deed to the City and County, each to hold an undivided interest in the property. . . . The parties acknowledge that the value of the replacement property is equal to or greater than the value of the property taken.” In exchange for the undivided interest with the County in the Mills Ranch property, “the City agrees to provide permanent and temporary easements, as described herein, at no cost to CDOT for completion of the transportation improvements.”

CDOT completed the survey work and legal descriptions for the property that needed to be conveyed, and worked with the city attorney on the language in the original right-of-way conveyance documents. The 1998 MOU estimated the need for 8.6 acres of City open space. The area in the more accurate survey and parcel descriptions totaled slightly less than 8.2 acres. In addition to the 8.2 acres necessary for the Entrance to Aspen, conveyance of 1.602 acres in Parcel PE-119 was included for trail and utility relocation as part of the AABC to Buttermilk project. The City conveyed those properties as the next step in the Entrance to Aspen project via Resolution No. 34 of 2002 in April 2002. At that point, CDOT was authorized by the 1996 vote and the Right of Way easement document to construct a two-lane parkway and corridor for light rail.

Since 2002, design and construction of the new Maroon Creek Bridge got underway, with completion scheduled for June 2008. The new bridge is designed in accordance with the Preferred Alternative to accommodate two lanes of general traffic, two bus lanes and a pedestrian-bike trail.

A Re-evaluation of the Entrance to Aspen Final Environmental Impact Statement was completed in 2006 and approved in 2007. The Re-evaluation found that:

Based on updated technical studies and consultations with resource agencies and local jurisdictions, the decisions made in the ROD remain valid for the following reasons:

1. There have been no substantive changes to the Preferred Alternative since publication of the ROD.
2. There have been no substantive changes to the existing environment or the impacts of project construction and operation estimated in the FEIS and ROD, nor have any additional types of impacts been identified that were not previously evaluated.

3. There have been no changes in regulations or requirements that would result in significant impacts not previously identified and evaluated in the FEIS and ROD.

DISCUSSION: Voter approval of the additional uses on the Right of Way in May 2007 cleared the way for completion of the bus lane design. A successful bidder was identified in December 2007. The EOTC approved the additional funding necessary to complete the project at its February 2008 meeting. The resolution that is presented for your review and consideration would authorize the City Manager to execute and deliver the amended Right-of-Way Easement to CDOT to allow the bus lane construction to proceed. CDOT staff and legal counsel in the attorney general's office have reviewed and approved the additional language as noted in the underlined sections of the marked-up easement document (Exhibit B).

FINANCIAL/BUDGET IMPACTS: Funding for the bus lane construction project has been approved to come from the county-wide ½ cent transit sales and use tax fund. The City Transit Fund will realize some cost savings or service expansion opportunities on the West Side bus route due to the transit travel time savings made possible by the bus lanes.

ENVIRONMENTAL IMPACTS: The open space associated with the construction of the bus lanes consists of: a portion of the easement across the former Zoline property (1.5 acres); the land in the Maroon Creek Basin immediately beneath the new bridge (0.5 acres); and a long thin strip of Aspen Golf Course (1.2 acres). This open space was conveyed to CDOT in 2002 along with easements on the Marolt/Thomas property and in the Castle Creek basin for the purpose of building the Preferred Alternative (a two lane parkway and a corridor for a light rail transit system). In exchange for this land, CDOT conveyed 31 acres of Mills Ranch Property along the river at the intersection of Hwy 82 and Brush Creek Road to the City. Because this land was conveyed to CDOT for the purpose of building the Preferred Alternative with light rail, voter approval was required to change the use of this space to allow for the construction of transit lanes. Since 2002 the ABC Trail has been relocated, the Maroon Creek Bridge is under construction, the Plum Tree Playing Field has been converted to the new tennis court complex, and the 10th Tee Box at the Aspen Golf Course has been adjusted. There will be no further impacts to adjacent open space as a result of the bus lanes.

During peak afternoon commute hours, RFTA often experiences delays of 12-17 minutes between the roundabout and the AABC. It is estimated that the proposed transit lanes would save RFTA riders an average of 15 minutes during the morning commute and 10 minutes during the afternoon commute during the summer and winter seasons. On a typical winter day, this could reduce travel times for approximately 13,200 inbound and outbound transit riders. This improvement in transit travel time and reliability will increase RFTA ridership and help to achieve the City's congestion mitigation and air quality goals. Because a full bus eliminates approximately 40 cars from the road, higher ridership will also create a somewhat smoother flow for general traffic.

RECOMMENDATION: Staff recommends approval of the attached resolution and the amended Right of Way easement document to allow construction of the bus lanes.

ALTERNATIVES: Council could discuss wording changes to the proposed Amended and Restated Right of Way Easement document. Any changes would need to be reviewed and approved by the attorney general's office.

CITY MANAGER COMMENTS: Recommend approval of this ROW
easement amendment to allow bus lane construction
to proceed.

RESOLUTION NO. 25
Series of 2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY EASEMENT TO CONSTRUCT, OPERATE, AND MAINTAIN A TWO LANE PARKWAY AND A CORRIDOR FOR A LIGHT RAIL TRANSIT SYSTEM AND, IN ADDITION, A TWO LANE PARKWAY AND TWO EXCLUSIVE BUS LANES BETWEEN BUTTERMILK AND THE MAROON CREEK ROUNDABOUT PURSUANT TO THE MAY 2007 CITY OF ASPEN BALLOT QUESTION, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council an Amended and Restated Right of Way Easement document that would convey to the Colorado Department of Transportation a right of way easement to construct, operate and maintain a two lane parkway and a corridor for a light rail transit system, and a two lane parkway and, in addition, two exclusive bus lanes between Buttermilk and the Maroon Creek Roundabout pursuant to the May 2007 City of Aspen bus lane ballot question, a copy of which is annexed hereto and made a part thereof.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

That the City Council of the City of Aspen hereby approves the amendment to the original 2002 Entrance to Aspen Right of Way Easement, a copy which is annexed hereto and incorporated herein, and does hereby authorize the City Manager of the City of Aspen to execute said Amended and Restated Right-of-Way Easement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the ____ day of _____, 2008.

Michael C. Ireland, Mayor

I, Kathryn S. Koch, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the day hereinabove stated.

Kathryn S. Koch, City Clerk

AMENDED AND RESTATED RIGHT-OF-WAY EASEMENT

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

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

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

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

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

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

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

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

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

City of Aspen, a Home Rule Municipality

Date: _____

By: _____
 Stephen H. Barwick,
 City Manager of the City of Aspen

State of Colorado)
) ss.
County of Pitkin)

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

Witness my hand and official seal.

My commission expires:

Notary Public