

**AGREEMENT TO ATTACH, INSTALL, OPERATE, AND MAINTAIN
PEDESTRIAN SIGNAL FACILITIES ON PRIVATE STREET LIGHT POLE**

This Light Pole Attachment Agreement dated this day of March 30, 2023 ("Effective Date") is made between BOP Teller, LLC (or "Owner" or "Licensor") and the City of Grand Junction, a Colorado home rule municipality ("City" or "Grand Junction" or "Licensee"). Licensor and Licensee are sometimes individually referred to as a "Party" and collectively as the "Parties." Except as indicated otherwise, all references to Licensee include its elected officials, officers, directors, employees, agents, and volunteers. Except as indicated otherwise, all references to Licensor include its personnel, employees, agents, and subcontractors.

RECITALS

WHEREAS, BOP Teller, LLC is the owner of a certain Light Pole (as defined below) in the City of Grand Junction, County of Mesa, State of Colorado; and

WHEREAS, The City seeks to install, operate, and maintain a certain Flashing Beacon (FB) and additional signage for a pedestrian crossing along North 23rd Street in the public right-of-way between the Grand Junction Veterans Administration Medical Center and the Owners property at **2401 North Avenue** (Teller Arms). Said light pole lies approximately 86± feet southwest of the southwest corner of the face of the west building at 2401 North Avenue adjacent to the east side of North 23rd Street across from the Veterans Administration as depicted in Exhibit "A"; and

WHEREAS, subject to the terms and conditions of this Agreement, the Owner is willing to allow the City use of the Owner's Light Pole for Facilities. Facilities for the purpose of this agreement means one Flashing Beacon, Sign(s) and associated appurtenances similar to those depicted in Exhibit "B".

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, this Agreement is issued under the following covenants, terms, and conditions:

1. TERM.

- 1.1. The term of this agreement will extend indefinitely ending upon either: 1) 90 days written notice by the Owner(s) to the City notifying them that the Light Pole will need to be replaced or removed, 2) or permanent removal, abandonment or closure of the Facilities from the subject pole.
- 1.2. If Owner provides written notice to the City as identified in item 1) above, that the pole will be removed or replaced, Owner will take reasonable steps to provide a suitable alternative for Licensee to re-locate its Facilities.

2. SCOPE.

2.1. General. Any and all rights expressly granted under this Agreement, which shall be exercised at the City's sole cost and expense, shall be subject to the prior and continuing right of the Owner under applicable laws for the use of any and all private property, exclusively or concurrently, with any other Person or Persons, and City's use shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title as of the installation of any Facilities, which may affect the Owner's Property. Neither Party shall infringe on any of the foregoing without the written approval of the affected Party. In case of such infringement, Owner may terminate this Agreement with thirty (30) days written notice in the event such infringement is not cured within ninety (90) days of written notice from Owner of such infringement. Nothing in this License Agreement shall be deemed to grant, convey, create, or vest a perpetual (a) real property interest in land in Licensee, including any fee or leasehold interest, easement, or any franchise rights; or (b) interest in the Owner-owned Light Pole.

2.2. Authorization. During the Term, the Owner hereby authorizes the City to attach, install, operate, maintain, remove, reattach, reinstall, relocate, enhance, and replace Facilities in or on the Owner's Light Pole identified in the attached Exhibits or applicable Supplement located within the Owner's Private Property for the purpose of providing a Flashing Beacon (FB) for a pedestrian crossing along North 23rd Street in the public right-of-way between the Grand Junction Veterans Administration Medical Center and the Owner's property at 2401 North Avenue (Teller Arms)

2.3. Nonexclusive

2.3.1 Licensee acknowledges and understands that the Light Pole is private property and that other purposes may have priority over any other use, including Licensee's use of the Light Pole. Licensee shall not interfere with Licensor's use of the Light Poles.

2.3.2 This License is a non-exclusive license, and Licensor reserves the right to allow the Light Poles to be used by other parties, except that Licensor shall not allow any other party to physically occupy that portion of the Light Poles where the Facilities are located. Notwithstanding the foregoing, Licensor reserves the right to make additions, deletions, or modifications to its own facilities on the Light Pole.

2.4. Compliance with Laws. Licensee shall comply with all applicable laws in the exercise and performance of its rights and obligations under this License Agreement.

2.5. Work Standards. Licensee agrees to install, operate, and maintain the Facilities and, when applicable, in accordance with the terms of this Agreement. Site Plans and Schedule of Performance as may be added and incorporated. Licensee will comply with applicable laws. Licensee acknowledges that Owner makes no warranties or representations regarding the fitness, safety, or suitability of any of Owner's property for the installation of the Facilities and that any performance of work or costs incurred by Licensee contemplated under this License Agreement by Licensee is at Licensee's

sole risk, except as otherwise expressly provided herein. Further, Licensee's work under this License Agreement will be performed fully in compliance with the requirements in this License Agreement.

2.6. Power. City is to provide its own source of power to its Facilities at its own expense.

3. INSTALLATION.

3.1 Installation. Upon execution of this agreement by both Parties, Licensee may install the Facilities; provided, such installation is carried out in accordance with the terms of this Agreement.

3.2 Licensee hereby accepts use of an Owner-owned Light Pole in an "as-is" condition, with no warranty, express or implied from Licensor as to any latent, patent and unforeseeable condition of the Owner-owned Light Pole, including its suitability for use by Licensee.

Drawings. Licensee shall provide the Owner an inventory and photo documentation of the Licensee equipment, personal property, and Facilities actually installed on Owner property within thirty (30) days after Completion of Work.

3.3 No review or approval under this Section shall impose or create any additional liability on or for Owner or City, and shall not relieve Licensee of any responsibility or liability which Licensee may have under this Agreement or by law.

4. NOTICES AND EMERGENCY NUMBERS.

All notices which shall or may be given pursuant to this License Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; or (ii) by means of prepaid overnight delivery service as follows:

Owner:

Randy Twist
Twist Realty
6136 Frisco Square Boulevard, Suite 400
Frisco, Texas 75034
randytwist@twistrealty.net
Office - 972-389-1795
Mobile – [REDACTED]

City:

City of Grand Junction Public Works Department
Attn: Transportation Engineer
333 West Avenue, Building D
Grand Junction, CO 81501
970-256-4110

With Copy to:

City Attorney's Office
250 North 5th Street
Grand Junction, CO 81501
970-244-1508

Notices shall be deemed given upon receipt in the case of personal delivery, five (5) days after deposit in the mail, or the next day in the case of overnight delivery. Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

In an Emergency Situation, the following numbers shall be used:

Owner:

Randy Twist
Twist Realty
6136 Frisco Square Boulevard, Suite 400
Frisco, Texas 75034
randytwist@twistrealty.net
Office - 972-389-1795
Mobile - [REDACTED]

City:

City of Grand Junction Public Works Department
Traffic On-Call
970-778-1480

Any form of contact with these numbers shall not be used as notice required by this section or other parts of this Agreement unless expressly stated in this Agreement.

5. TERMINATION.

- 5.1.** Except as expressly set forth in this Agreement, this License Agreement may be terminated by either Party upon thirty (30) days, prior written notice to the other Party upon a default of any material covenant or term hereof by the other Party, which default is not cured within ninety (90) days of receipt of written notice of default [or, if such default is not curable within ninety (90) days, if the defaulting Party fails to commence such cure within thirty (30) days or fails to thereafter diligently prosecute such cure to completion].

Licensee may terminate this License Agreement without cause with thirty (30) days prior written notice to Owner.

6. MISCELLANEOUS PROVISIONS.

- 6.1. Licensee shall not assign, sell, or transfer its interest under this License Agreement.
- 6.2. Exhibits referred to in this License Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment, if any, to this License Agreement are by such reference incorporated in this License Agreement and shall be deemed a part of this License Agreement as though more fully set forth herein. All requirements or Provisions contained in any of the exhibits are material terms and conditions of this License Agreement and enforceable as such.
- 6.3. This License Agreement is binding upon the successors and assigns of the parties hereto subject to the requirements of Section 6.1.
- 6.4. Each individual executing this License Agreement on behalf of a Party hereto warrants that: (i) such Party is duly organized and existing, (ii) the signer is duly authorized to execute and deliver this License Agreement on behalf of said Party, (iii) by so executing this License Agreement, such Party is formally bound to the Provisions of this License Agreement, (iv) the Party's entry into this License Agreement does not violate any Provision of any other agreement to which said Party is bound, and (v) there is no litigation or legal proceeding that would prevent said Party from entering into this License Agreement.
- 6.5. **Counterparts.** This License Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatories to the same or original counterpart.
- 6.6. **Exhibits.** The attached exhibits are made a part hereof:

Exhibit A: Attachment A: Site Plan / Pole Location; and

Exhibit B: Flashing Beacon (FB) - Sign(s) and Appurtenances Attachment Example

The information contained in any such exhibits or any Supplement may be added to, changed, or amended from time to time on the same terms and conditions as reflected in the License Agreement subject to the mutual agreement in writing by Licensee's and Licensors designated representative. Such mutual written agreement by each of the Party's designated representative shall be deemed an addition change, or an amendment of this License Agreement not requiring further amendment to the entire License Agreement. In the event of a conflict between the terms of this Agreement and the Exhibits, the terms of this Agreement shall govern.

- 6.7 **Modifications and Amendments.** This Agreement shall not be modified, revoked, or amended except by written agreement signed by all Parties.
- 6.8 **Venue and Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of Colorado. Venue for all actions regarding this

Agreement shall be in Mesa County, Colorado

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this License Agreement to be executed by their duly authorized officers and representatives as of the Effective Date written at the beginning of this License Agreement.

LICENSOR:

BOP TELLER, LLC

By: 
William D Archer, Managing Member

LICENSEE:

CITY OF GRAND JUNCTION

By: 
Director of Public Works

~~ATTEST:~~

By: _____



APPROVED AS TO FORM:

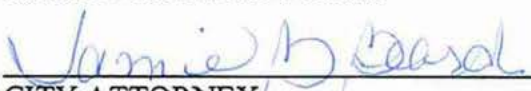

Assistant CITY ATTORNEY

Exhibit A

Site Plan / Pole Location

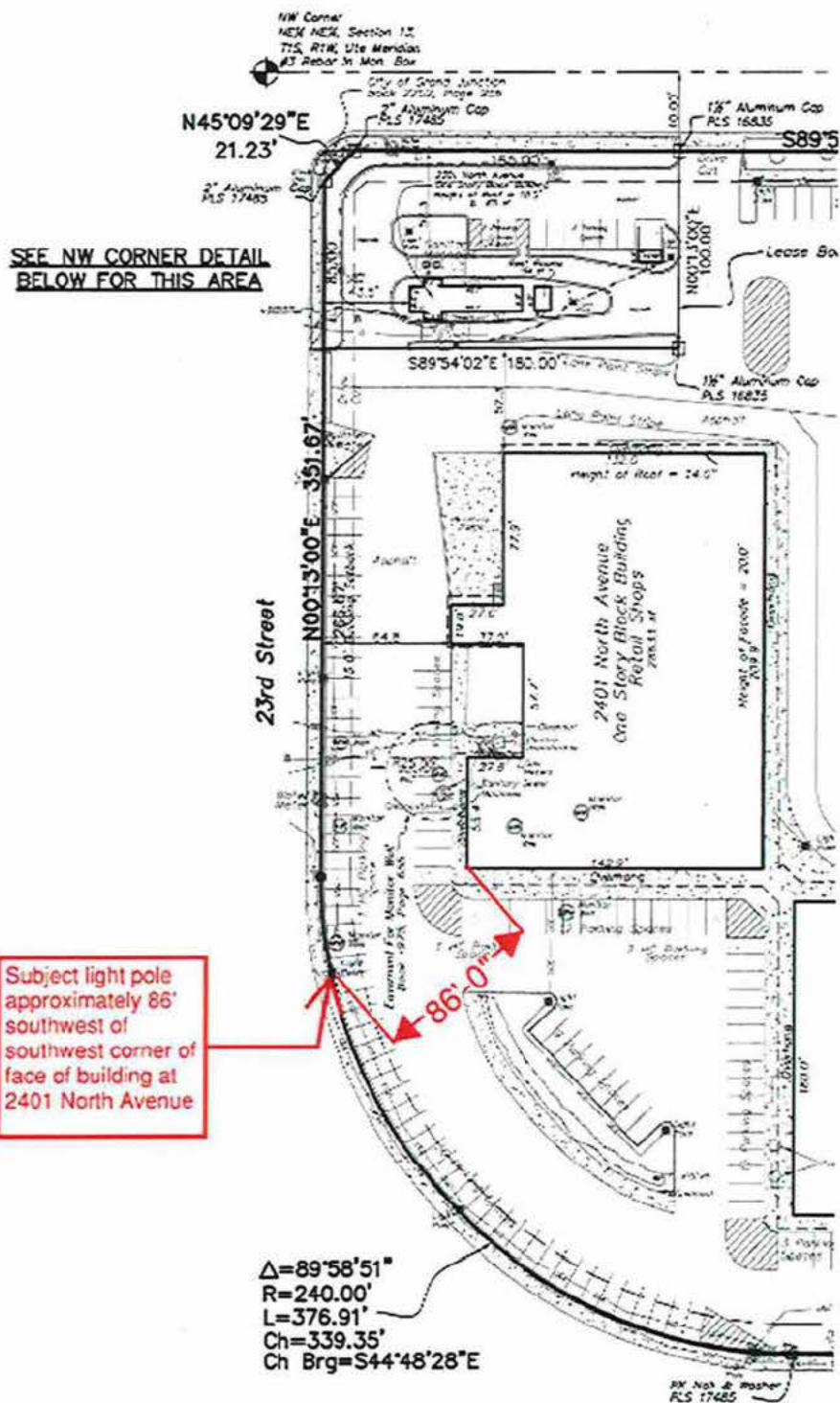


Exhibit B

Typical RRFB, Sign(s) and Appurtenances Attachment Example

