

RESOLUTION NO. 29-19

A RESOLUTION AUTHORIZING THE CITY OF COLORADO SPRINGS ("CITY") TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH PEAK METROPOLITAN DISTRICT NO. 1 ("DISTRICT"), ENTITLED *FACILITIES ACQUISITION AND REIMBURSEMENT AGREEMENT* ("IGA")

WHEREAS, the City Council of the City of Colorado Springs, Colorado ("City Council") is authorized, pursuant to C.R.S. § 29-1-203, to enter into intergovernmental agreements with other governmental entities; and

WHEREAS, on August 28, 2018, by Resolution No. 98-18, City Council approved the Service Plan for the Peak Metropolitan Districts Nos. 1, 2, and 3; and

WHEREAS, the District is authorized to construct, acquire, install and finance public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, and mosquito control and other facilities and services, which benefit property within the Districts' boundaries and/or service area; and

WHEREAS, The City is the fee owner of certain property as legally described in Exhibit A of the IGA, attached hereto and incorporated by this reference; and

WHEREAS, the necessary improvements serve and develop the property, including certain street, sewer, water and storm public infrastructure as more particularly described in Exhibit B of the IGA, attached hereto and incorporated by this reference; and

WHEREAS, the IGA has been authorized and approved by the Parties; and


WHEREAS, the IGA provides the terms and conditions by which the District will reimburse the Airport for its monetary contribution to the design and construction of certain public infrastructure within the development known as Peak Innovation Park; and

WHEREAS, the Airport respectfully requests City Council approve the attached IGA.

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


Section 1. City Council approves the attached IGA between Peak Metropolitan District No.1 and the City, by and through its enterprise, the Colorado Springs Municipal Airport, that sets forth the terms and conditions by which the District will reimburse the City for its monetary contribution to the design and construction of certain public infrastructure within the development known as Peak Innovation Park.

Dated at Colorado Springs, Colorado this 12th day of February, 2019.




Council President

ATTEST:



Sarah B. Johnson, City Clerk



FACILITIES ACQUISITION AND REIMBURSEMENT AGREEMENT

This **FACILITIES ACQUISITION AND REIMBURSEMENT AGREEMENT** (“**Agreement**”) is made and entered into this 6th day of February, 2019, with an effective date of FEB. 12, 2019, by and between **PEAK METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and the **CITY OF COLORADO SPRINGS**, a Colorado home rule city and Colorado municipal corporation (the “**City**”), by and through its enterprise, the Colorado Springs Municipal Airport (“**Airport**”) (individually, each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. The City approved a Consolidated Service Plan for the District, Peak Metropolitan District No. 2 (“**District No. 2**”) and Peak Metropolitan District No. 3 (“**District No. 3**”, and together with the District and District No. 2, the “**Districts**”) on August 28, 2018, as it may be amended from time to time (the “**Service Plan**”).

B. Pursuant to the authority granted to the Districts by the Service Plan, the Districts are authorized to construct, acquire, install and finance public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, and mosquito control and other facilities and services, which benefit property within the Districts’ boundaries and/or service area (“**Public Infrastructure**”).

C. The District, District No. 2 and District No. 3 entered into a Memorandum of Understanding dated January 29, 2019 (“**MOU**”), pursuant to which the District will provide all financing, construction, administration, and operation and maintenance services to and for the benefit of the Districts until such time as a Facilities Funding, Construction and Operations Agreement is executed.

D. The City is the fee owner of certain property as legally described in Exhibit A, attached hereto and incorporated by this reference (the “**Property**”).

E. The Property has been or will be included within the boundaries and/or service area of District No. 2 pursuant to Section 32-1-401 *et seq.*, C.R.S.

F. The improvements necessary to serve and develop the Property include certain street, sewer, water and storm Public Infrastructure generally described in Exhibit B (the “**Improvements**”), attached hereto and incorporated by this reference.

G. The District does not currently have sufficient monies available to construct and/or acquire the Improvements.

H. The Parties have determined that for reasons of economic efficiency and timeliness it is in the best interests of the Districts for the City to contribute funding for the construction of the Improvements, subject to reimbursement as more specifically described herein.

I. The District has received and / or may require certain additional advances relative to the organization of the Districts and construction of the Public Infrastructure (“**UFCS**”).

Contribution) from the developer of the remainder of the property within the Service Area of the Districts, UFCS Airport, LLC (“**UFCS**”). To that end, the District has or will enter into a Facilities Funding and Acquisition Agreement (“**UFCS FFAA**”) with UFCS to govern the provision of such services and Public Infrastructure and related reimbursement rights (“**UFCS Reimbursement**”).

J. The Districts were organized on January 25, 2019 (the “**Organization Date**”).

K. Pursuant to an escrow agreement (the “**Escrow Agreement**”) to be entered into between City, the City by and through its enterprise, Colorado Springs Utilities (“**CSU**”), and TC Pursuit Services, Inc. (along with its permitted assigns, “**TCP**”), TCP agreed to contribute Three Million Dollars (\$3,000,000) (“**TCP Contribution**”), the City agreed to contribute up to One Million Five Hundred Thousand Dollars (\$1,500,000) (“**City Contribution**”), and CSU agreed to contribute One Million Five Hundred Thousand Dollars (\$1,500,000) (“**CSU Contribution**”) for the construction, installation and/or financing of the Improvements. Together, the TCP Contribution, the City Contribution, and the CSU Contribution total Six Million Dollars (\$6,000,000) (the “**Total Contribution**”).

L. In accordance herewith, the City agrees to provide the City Contribution to assist in financing the construction of the Improvements in accordance with the requirements of the Escrow Agreement, and the District agrees to reimburse the City (the “**Reimbursement Party**” and, with TCP and UFCS, the “**Reimbursement Parties**”) for costs incurred by the Reimbursement Party for the construction of the Improvements, including related soft costs (“**Construction Related Expenses**”) in accordance herewith.

M. Though CSU is providing the CSU Contribution, the Parties acknowledge and agree that the CSU Contribution is provided for the purpose of economic development within the City and shall not be eligible for reimbursement under this, or any agreement, with the Districts.

N. In conjunction with the Escrow Agreement, the District has or will also enter into a Reimbursement Agreement (“**TCP Reimbursement Agreement**” and, with this Agreement and the UFCS FFAA, the “**Reimbursement Agreements**”) with TCP to reimburse TCP for the TCP Contribution (“**TCP Reimbursement**”).

O. It is anticipated that the District will issue bonds or a loan, the proceeds of which may be utilized in part to reimburse the Construction Related Expenses incurred by the Reimbursement Parties.

P. This Agreement is intended solely as the Parties’ memorialization of the terms and conditions under which the City will receive reimbursement of the City Contribution and, therefore, nothing in this Agreement shall be construed as an obligation of the City to construct any Improvements or create a third-party beneficiary right or obligation of any other party, unless otherwise expressly stated herein.

Q. The Parties desire to set forth their respective rights, obligations and procedures with respect to (i) reimbursement of the City for the City Contribution, (ii) the acquisition of constructed Improvements, and (iii) to acknowledge the rights of the other Reimbursement Parties as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained in this Agreement, the Parties agree as follows:

COVENANTS AND AGREEMENTS

I. CONSTRUCTION OF IMPROVEMENTS TO BE ACQUIRED BY THE DISTRICT

1.1 Improvements Acquired by District. The Parties recognize the City has agreed to provide the City Contribution as a contribution to the cost of designing, constructing and completing the Improvements. The Parties agree that prior to the City requesting that the District or other governmental entity acquire any Improvements pursuant to this Agreement, the District shall obtain a certification of an independent engineer retained by the District that the Construction Related Expenses are reasonable and comparable for similar projects as constructed in the Colorado Springs, Colorado local community, and verification from the District's accountant that the Construction Related Expenses are reimbursable ("**Verified Costs**") based on the copies of the invoices, bills, and requests for payment provided to the District pursuant to Section 1.4 herein.

1.2 Construction Contract Requirements. The City agrees that its development agreement with TCP for all or any portion of the Improvements shall require TCP, or its subcontractor(s) to provide a two (2) year warranty from the date of initial acceptance of the completed Improvements and a security mechanism to secure the warranty approved by the District, the City, or as required by the applicable governmental entity to which the Improvements shall be dedicated.

1.3 Periodic Reports. If the District so requests, the City will provide periodic reports on the status of completion of the Improvements and/or accounting of Construction Related Expenses.

1.4 Acquisition of the Improvements. The District, the City or other governmental entity shall acquire the Improvements after preliminary acceptance from the appropriate accepting jurisdiction and prior to final acceptance upon receipt, review and approval by the District's accountant and engineer, as applicable, of the following:

(a) As-built drawings for the Improvements to be conveyed by TCP and/or its subcontractor(s) (collectively, the "**Contractor(s)**");

(b) Lien waivers and indemnifications from each Contractor verifying that all amounts due to Contractors, subcontractors, material providers, or suppliers have been paid in full, in a form acceptable to the District;

(c) An assignment to the District, the City or other governmental entity of any warranties associated with the Improvements, in a form acceptable to the governmental entity, such as a warranty agreement;

(d) Copies of all contracts, pay requests, change orders, invoices and evidence of payment of same, the final AIA payment form (or similar form approved by the District, the City or other governmental entity), canceled checks, and any other requested documentation to verify the amount of reimbursable Construction Related Expenses requested;

(e) Copies of the Escrow Agreement and any related documentation necessary for the District's engineer to verify disposition of funds held thereunder.

(f) An executed Bill of Sale conveying the Improvements to the District, the City or other governmental entity substantially in the form attached hereto as **Exhibit C**; and

(g) Such other documentation, records and verifications as may reasonably be required by the District.

II. FUNDING OF IMPROVEMENTS

2.1 Construction of the Improvements. As set forth in Part I., above, the Parties anticipate that the City will provide the City Contribution for the purpose of funding a portion of the design, engineering, construction and completion of certain Improvements and payment of Construction Related Expenses, which shall be funded by withdrawals from escrow pursuant to the Escrow Agreement, in which case the District, City or other governmental entity will acquire such Improvements in accordance with the provisions of Part I., above.

2.2 Funding of Additional Expenses. The District may require additional advances relative to the organization of the Districts and/or provision of the Public Infrastructure, including the Improvements ("**Additional Advances**"). Any such Additional Advances shall be made by UFCS pursuant to and in accordance with the UFCS FFAA. Reimbursement of Additional Advances shall be made in accordance with the UFCS FFAA on the basis set forth in Section 3.3 hereof.

III. REIMBURSEMENT OF DEVELOPER AND CITY

3.1 Reimbursement. Subject to the receipt of funding pursuant to Section 3.3 herein, and pursuant to the division of reimbursement provisions of Section 3.2 and 3.3(b) hereof, the District agrees to make payment to the Reimbursement Party for all Verified Costs, together with interest thereon, unless otherwise agreed to in writing by the Parties.

3.2 Reimbursement Limitations.

(a) To the City. Subject to the provisions of this Section 3.2, and the limitations of Section 3.3 hereof, the District agrees to reimburse the City for Verified Costs up to the amount of the City Contribution, together with interest thereon ("**City Reimbursement Limitation**"). The District shall have no reimbursement obligation to the City for Verified Costs that exceed the City Reimbursement Limitation.

(b) To UFCS and TCP. The City acknowledges and agrees the District has or will enter into the UFCS FFAA and TCP Reimbursement Agreement whereby the District has or will agree to reimburse UFCS the UFCS Reimbursement and TCP Reimbursement, respectively, together with interest and in accordance with the requirements of those respective agreements.

(c) Improvements Eligible for Reimbursement. **Exhibit B** lists the Improvements the City will seek reimbursement for and that are eligible for reimbursement by the District under this Agreement, subject to the City Reimbursement Limitation.

(d) Interest. Simple interest shall accrue from the date of deposit of the City Contribution pursuant to the Escrow Agreement, at the rate of seven percent (7%) per annum until paid hereunder.

3.3 Funding for Reimbursement.

(a) Bond or Loan Issuance. The Parties agree that no payment shall be required of the District hereunder unless and until the District issues bonds or a loan in an amount sufficient to reimburse the Reimbursement Parties for all or a portion of the Verified Costs. The District may, however, make payments from available funds after the payment of the District's annual debt service and operations and maintenance expenses. The City agrees, and each of the Reimbursement Parties have acknowledged in the respective Reimbursement Agreements, that, to the extent that any amounts are still owed under this Agreement after the District issues bonds or a loan, any obligation to pay such amounts is subordinate to such bonds or loan. The District agrees to exercise reasonable efforts to issue bonds or a loan to reimburse amounts owed to the Reimbursement Parties under the Reimbursement Agreements.

(b) Pro-Rata and Pari Passu Reimbursement. Any reimbursement made hereunder and under the Reimbursement Agreements shall be made to each of the City, TCP, and UFCS on a *pari passu* basis, in an amount that represents the proportionate share of TCP Contribution, the City Contribution, and/or the UFCS Contribution, respectively, as of the date of the reimbursement. By way of example, assuming TCP has made the full TCP Contribution, the City has made the full City Contribution and UFCS has made a UFCS Contribution of \$500,000 under the UFCS FFAA, with any reimbursement made, TCP shall be reimbursed with Fifty Five Percent (55%), the City shall be reimbursed with Thirty Six Percent (36%), and UFCS shall be reimbursed with Nine Percent (9%) of the reimbursement amount.

(c) Priority of Payments. The Parties agree that payments by the District to the Reimbursement Parties shall credit first against accrued and unpaid interest and then to the principal amount due.

(d) Annual Appropriation. The obligations of the Parties contemplated in this Agreement are subject to annual appropriation and shall not be deemed to be multiple-fiscal year obligations for the purposes of Article X, Section 20 of the Colorado Constitution.

3.4 Termination of Reimbursement Obligations. Notwithstanding any provision herein to the contrary, the District's obligations to reimburse the City for any and all funds advanced or otherwise payable to them under and pursuant to this Agreement (whether the City has already advanced or otherwise paid such funds or intends to make such advances or payments in the future) shall terminate automatically and be of no further force or effect upon the occurrence of the initiation of bankruptcy, receivership or similar process or actions. The termination of the District's reimbursement obligations as set forth in this section shall be absolute and binding upon the City, its successors and assigns. The City, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement in the event that any of the occurrences described in this section occur.

IV. GENERAL PROVISIONS

4.1 Representations.

(a) The City hereby represents and warrants to and for the benefit of the District as follows:

(i) The City is a Colorado home rule city and Colorado municipal corporation and is qualified to do business in the State of Colorado.

(ii) The City has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the City with any of its terms, covenants or conditions is or shall become a default under any other Airport-related agreement or contract to which the City is a party or by which the City is or may be bound. The City has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(iii) The City represents that it has sufficient available funds to fulfill its obligations under this Agreement and the Escrow Agreement.

(b) The District hereby represents and warrants to and for the benefit of the other Party as follows:

(i) The District is a quasi-municipal corporation and political subdivision of the State of Colorado and is qualified to do business in the State of Colorado.

(ii) The District has the full power and legal authority to enter into this Agreement. Neither the execution or delivery of this Agreement nor the compliance by the District with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which the District is a party or by which the District is or may be bound. The District has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by each Party to the other Parties for the entire term of this Agreement.

4.2 Term; Repose. Notwithstanding anything set forth in this Agreement to the contrary, the District shall not be obligated to make any payments to the Reimbursement Party for Construction Related Expenses withdrawn from escrow by the City pursuant to the Escrow Agreement, but not provided to the District within Three Hundred Sixty (360) days of the date such Construction Related Expenses were withdrawn from escrow pursuant to the Escrow Agreement. In the event the District has not reimbursed the Reimbursement Party for any portion of the Verified Costs by December 31, 2059, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

4.3 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally-recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Peak Metropolitan District No. 1
c/o McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1214
Phone: 303-592-4380
Email: mbecher@specialdistrictlaw.com
Attn: Megan Becher

With a Copy To: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: mbecher@specialdistrictlaw.com
Attn: Megan Becher

To the City: City of Colorado Springs
c/o The Colorado Springs Airport
7770 Milton E. Proby, Suite 50
Colorado Springs, CO 80916
Attn: Director of Aviation

With a Copy To: Office of the Colorado Springs City Attorney
30 South Nevada Avenue, Suite 501
Colorado Springs, CO 80901
Attn: Michael Gendill

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally-recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed or email transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

4.4 Assignment. No Party shall assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

4.5 Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

4.6 Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party/Parties shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its/their judgment or award its/their reasonable attorneys' and expert witness fees and court costs. The Parties expressly agree that the City's failure to provide the documents and information, within the City's custody and control, required under Section 1.4 with respect to Construction Related Expenses withdrawn from escrow pursuant to the Escrow Agreement to construct, install and/or finance the Improvements shall constitute a breach and default under this Agreement; provided, however, such default by the City shall not be deemed to have occurred unless written notice of the default has been provided to the City and the City has not cured the default within thirty (30) days after delivery of the notice.

4.7 Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the County of El Paso, Colorado.

4.8 Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

4.9 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

4.10 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

4.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

4.12 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

4.13 Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the Parties unless the same is in writing and duly executed by the Parties hereto.

4.14 No Waiver of Immunity. The Parties specifically do not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, C.R.S. § 24-1-101 *et seq.*, as now written or hereafter amended.

4.15 Nondiscrimination.

(a) District acknowledges that the City is obligated to take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participation in, or denied the benefits of, or otherwise be subjected to discrimination in or under any activity or program for which the City receives federal financial assistance.

(b) As used below, the term “contractor” shall mean District, the term “sponsor” shall mean the City, and the term “contract” shall mean this Agreement.

(c) During the performance of this Contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees, as follows:

(i) **Compliance with Regulations:** The contractor (hereinafter includes consultants) shall comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(ii) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate directly or indirectly in the discrimination prohibited by 49 C.F.R. § 21.5, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

(iii) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds race, creed, color, national origin, or sex.

(iv) **Information and Reports:** The contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such Acts, regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

(v) **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this Contract, the sponsor will impose

such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(1) Withholding payments to the contractor under the contract until the contractor complies; and/or

(2) Cancellation, termination, or suspension of the contract, in whole or in part.

(vi) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) District, for itself/himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(i) In the event facilities are constructed, maintained, or otherwise operated on the Property described in this Contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, District shall maintain and operate such facilities and services in compliance with all other requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(e) District, for itself/himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, creed, color, national origin, or sex, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, or sex, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that District will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

(f) **Title VI List of Pertinent Nondiscriminatory Statutes and Authorities:** During the performance of this contract, the contractor, for itself, its assignees, and successors in

interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. part 21.

(ii) 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);

(iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

(iv) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination based on disability); and 49 C.F.R. part 27;

(v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

(vi) Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

(vii) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(viii) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

(ix) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(x) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(xi) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

(xii) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

(g) District agrees to forward a copy of any Title VI complaint it receives in connection with District's activities and operations at the Airport within three (3) days of District's receipt of same and identify the actions taken regarding any such complaint. District further agrees to cooperate with the City in its investigation of any Title VI complaints, including making relevant documents and records available to the City for inspection upon reasonable notice, and to provide reasonable assistance to the City in connection with any compliance review conducted by the FAA. A copy of 49 C.F.R. part 21 is available at the Airport Administration Office for inspection during normal business hours upon request.

(h) To the extent that the contractor conducts or engages in any aeronautical activity for furnishing services to the public at the Airport, the contractor shall:

(i) Furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof; and

(ii) Charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume Districts.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

DISTRICT:

PEAK METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
President

ATTEST:

Secretary / Assistant Secretary

CITY:

CITY OF COLORADO SPRINGS, a Colorado home rule city and municipal corporation

By: 

Gregory S. Phillips, A.A.E.
Director of Aviation

Approved as to Form:

By: _____
Michael K. Gendill
Office of the City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

DISTRICT:

PEAK METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 

President

ATTEST:




Secretary / Assistant Secretary

CITY:

CITY OF COLORADO SPRINGS, a Colorado home rule city and municipal corporation

By: _____
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Director of Aviation

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Office of the City Attorney

EXHIBIT B

Improvements

The Improvements necessary to serve and develop the Property include, without limitation, certain street, sewer, water and storm improvements, as follows:

- Two lanes of Grinnell Blvd. from S. Powers Blvd. to the intersection of Integration Loop;
- 2 lanes of Integration Loop from the intersection of Grinnell Blvd. east to the eastern boundary of Lot 1, Filing No. 1C;
- Acceleration and deceleration lanes and associated turn pockets in S. Powers Blvd. and Grinnell Blvd. south of S. Powers Blvd., together with required traffic signal modifications;
- Replacement of the existing sanitary sewer main located within the section of Grinnell Blvd to be constructed from a point east of Integration Loop to the existing lift station;
- Water main extension from the intersection of Cresterra Pkwy and Milton Proby Pkwy to the Lot 1, Filing No. 1C within Integration Loop and then extending northeast to connect to an existing waterline located in Embraer Heights;
- Storm drainage facilities to address runoff generated from the construction of Grinnell Blvd. and the Integration Loop;
- Other Improvements necessary to serve and develop the Property.

EXHIBIT I
(Improvements)

Project Description

Estimated/Actual Cost
