

RESOLUTION NO. ____ – 23

A RESOLUTION AUTHORIZING PUBLIC IMPROVEMENT
INTERGOVERNMENTAL AGREEMENT WITH PEAK
METROPOLITAN DISTRICT NO. 3

WHEREAS, City of Colorado Springs (the “City”), by and through its enterprise, the Colorado Springs Municipal Airport (the “Airport”), currently owns approximately 1,600 acres, more or less, of real property situated in Colorado Springs, El Paso County, Colorado, commonly known as “Peak Innovation Park”; and

WHEREAS, Peak Innovation Park is a mixed-use business park controlled by the Airport, but not used for aviation purposes; and

WHEREAS, City Council by Resolution No. 35-23 authorized the sale, in fee simple, of 12.693 acres, more or less, of real estate in Peak Innovation Park (the “Property”); and

WHEREAS, as a part of the sale, the Airport and the Property buyer entered into that certain Development Agreement, dated June 8, 2023 (the “Development Agreement”), which obligates the Airport to complete certain infrastructure necessary for the development of the Property, including the construction and extension of the Integration Loop roadway, the construction of the Logistics Point roadway, the construction of regional stormwater facilities, and the installation of utilities (collectively the “Public Improvements”); and

WHEREAS, the Public Improvements are estimated to cost approximately \$14 million and will serve the Property, as well as additional areas of Peak Innovation Park; and

WHEREAS, although not a party to the Development Agreement, Peak Metropolitan District No. 3 (the “District”), by Colorado statute and by its approved service plan, may undertake construction of the Public Improvements, and the District has placed \$63.78 million in bonds (including \$18.25 million in limited tax general bonds and \$45.53 million in limited tax general obligation capital appreciation bonds) to pay for the Public Improvements; and

WHEREAS, the District and UFCS Airport, LLC, a Colorado limited liability company (the “District Developer”), entered into that certain Facilities Acquisition and Payment Agreement dated November 30, 2022 (the “Construction Agreement”), wherein the District Developer agreed to construct the Public Improvements on behalf of the District; and

WHEREAS, the Airport is not party to the Construction Agreement; and

WHEREAS, although the Airport is responsible for construction of the Public Improvements under the Development Agreement, there is no written agreement between the Airport and the District specifically addressing the construction of the Public Improvements; and

WHEREAS, in the event of a default in the timely construction of the Public Improvements, the Property buyer requested certain construction completion rights and financial assurances from both the Airport and the District; and

WHEREAS, under the Development Agreement, the Property buyer has the right to complete the Public Improvements in the event of a construction default, together with financial assurances under that Certain Escrow Agreement between the Airport and the Property buyer, dated June 8, 2023 (the “Escrow Agreement”); and

WHEREAS, the Escrow Agreement requires the Airport to place in escrow \$14,075,681.00 as a source to repay the Property buyer in the event it takes over construction after default; and

WHEREAS, the Escrow Agreement provides that the Airport’s escrowed funds will no longer continue as a financial assurance if the District enters into agreements necessary for the District to complete the Airport’s Public Improvements and for the District to provide substitute financial assurances and completion rights to the Property buyer, such agreements being 1) a Public Improvement Intergovernmental Agreement between the Airport and the District (the “IGA”) and 2) an Availability of Funds and Step-in Rights Agreement, by and among the District, the Airport and the Property buyer (the “Step-in Rights Agreement”); and

WHEREAS, in addition to the approval of the IGA, the Escrow Agreement requires City Council to approve the Step-in Rights Agreement.

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

Section 1. City Council finds that it is in the best interests of the City and the Airport to enter into the IGA and the Step-in Rights Agreement.

Section 2. The Mayor and Business Park Development Director are authorized to execute the IGA and Step-in Rights Agreement substantially in the form as set forth, respectively, in Exhibits 1 and 2, attached hereto and made a part hereof.

Dated at Colorado Springs, Colorado this ____ day of _____ 2023.

Randy Helms. Council President

ATTEST:

Sarah B. Johnson, City Clerk

EXHIBIT 1

Public Improvement Intergovernmental Agreement

EXHIBIT 2

Availability of Funds and Step-in Rights Agreement