

RESOLUTION NO. ____ – 18

A RESOLUTION AUTHORIZING THE DISPOSAL OF SURPLUS CITY PROPERTY TO J. SEAN O'HEARN (PURCHASER), AS THE ONE LOGICAL, POTENTIAL PURCHASER

WHEREAS, City of Colorado Springs ("City"), by and through its enterprise, the Colorado Springs Municipal Airport ("Airport"), currently owns, by fee title, 900 acres, more or less, of real property situated in Colorado Springs, El Paso County, Colorado, as generally depicted and described on **Exhibit A**, which is attached and incorporated into this Resolution, ("Peak Innovation Park") and is an area of land designated as a mixed use business park development for the benefit of the Airport; and

WHEREAS, the City currently owns, by fee title, the parcel of land to be disposed of in accordance with this Resolution which is 1/10th of one acre (4,356 square feet) more or less, of real property situated in the southwest quarter of Peak Innovation Park, as generally depicted and described on **Exhibit B**, which is attached and incorporated into this Resolution, (the "Property"); and

WHEREAS, the Airport is the controlling department of the Property; and

WHEREAS, Peak Innovation Park, which includes the Property, was purchased with Federal Aviation Administration ("FAA") grant funds on November 6, 1970, for the purpose of noise abatement and runway approach protection; and

WHEREAS, on June 14, 2006, the FAA issued the Airport a letter releasing Peak Innovation Park land from aeronautical use requirements which frees that land for Airport business park development. See **Exhibit C**; and

WHEREAS, no other department or city enterprise has expressed an interest in the Property; and

WHEREAS, City Code § 7.7.1804(B) (2001) and Chapter 5 of *The Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest* ("Real Estate Manual") authorizes the disposal of surplus property to one logical, potential purchaser upon City Council approval; and

WHEREAS, on August 28, 2018, Resolution No. 98-18 (**Exhibit D**), City Council approved the Service Plan for the Peak Metropolitan Districts Nos., 1, 2, and 3 for the purpose of financing the construction of Public Improvements as defined in the *Consolidated Service Plan for Peak Metropolitan District Nos., 1, 2, and 3, in the City of Colorado Springs, Colorado* ("Service Plan"); and

WHEREAS, the Airport intends to develop Peak Innovation Park as a mixed use development for such beneficial uses as may be determined by the Airport from time to time (the "Project"); and

WHEREAS, the Airport's master developer, UFCS, Airport, LLC, ("Urban Frontier"), pursuant to Resolution No. 98-18, intends to organize two special financial districts and one management district to serve the Project, in accordance with the provisions of the Special District Act, C.R.S. § 32-1-101 *et seq.*, and the approved Service Plan attached as **Exhibit D**; and

WHEREAS, the Special District Act provides that only "eligible electors" may vote at required special district elections and serve on the Board of Directors of a special district; and

WHEREAS, under C.R.S. § 32-1-103(5), an eligible elector must be an individual who, or whose spouse or civil union partner, is a registered Colorado voter and either a resident of the proposed or existing special district, or an owner of taxable real or personal property within the proposed or existing special district; and

WHEREAS, C.R.S. § 32-1-103(5)(b), provides that a person may be considered an owner of taxable real or personal property, and thus become qualified as an eligible elector, if the person, or the person's spouse or civil union partner, is obligated to pay taxes under an Agreement to purchase taxable property situated within the boundaries of a proposed or existing special district; and

WHEREAS, C.R.S. § 32-1-808, provides additional authority and requirements regarding the qualification of eligible electors; and

WHEREAS, C.R.S. § 32-1-808(2)(a)(III), permits an individual to be qualified as an eligible elector if there are less than eleven (11) eligible electors as of any date before an organizational election; and

WHEREAS, there are currently less than eleven (11) eligible electors; and

WHEREAS, in order to become an eligible elector pursuant to C.R.S. § 32-1-103(5)(b), the Purchaser identified herein desires to procure an option to purchase an undivided 1/10th of an acre interest in the Property together with any and all easements, rights of way and appurtenances thereto upon the terms and provisions as hereinafter set forth; and

WHEREAS, the Property is situated in a drainage basin which is an area within Peak Innovation Park that is neither feasible nor economical to develop; and

WHEREAS, the Property has been vacant since its initial acquisition in November, 1970, without interest from any other potential purchaser; and

WHEREAS, in April 2007, the City, via its request for procurement ("RFP") process, retained COPT Cresterra Master, LLC ("Cresterra") as its master developer for the Airport business park; and

WHEREAS, upon mutual termination of its contract with Cresterra, the City, via its RFP process, retained Urban Frontier, in May 2016, as its master developer for the Airport's business park. Urban Frontier rebranded the business park as "*Peak Innovation Park*"; and

WHEREAS, since 2006, the Property has been marketed by the Airport and both of its master developers; and

WHEREAS, the development of a business park for the benefit of the Airport is unprecedented and necessarily requires the creation of metropolitan districts for the primary purpose of financing the construction and maintenance of the Public Improvements as defined in the Service Plan, which catalyzes the economic engine of the business park; ensures high level, attractive architectural design standards; and provides for high level maintenance of the infrastructure throughout the life of the business park; and

WHEREAS, the creation of the metropolitan district(s) necessarily requires the sale of the Property to meet the requirements under the Special District Act, C.R.S. § 32-1-101 *et seq.*; and

WHEREAS, pursuant to City Code § 7.7.1804 (B) and Chapter 5, § 5.4 of the Real Estate Manual, Purchaser is the one logical, potential purchaser for the following reasons:

- Selling the Property for a fee simple interest complies with the Special District Act, C.R.S. § 32-1-101 *et seq.*;
- Selling the Property to Purchaser is anticipated to significantly benefit the Airport because there are no other governmental entities, including the City, which have deemed it desirable, feasible, or practical to undertake the planning, designing, construction, installation, relocations, redevelopment and financing of the Public Improvements defined in the Service Plan which are necessary for the development and completion of the Peak Innovation Park Project;
- Selling the Property to Purchaser for the intended use fits within the compatible land uses of the Airport;
- Selling the Property to Purchaser, in particular, for the intended use supports the Airport's reason for requesting the FAA release the land from aeronautical use requirements;
- Purchaser, in addition to a fiduciary duty, will have the best interest of Peak Innovation Park in mind because Purchaser is a managing partner of Enerbia Consulting Group, LLC, an engineering and planning firm contracted to Urban Frontier for all of Urban Frontier's developments;
- There are minimal utilities and other infrastructure located within the Property site area. Creating a metropolitan district reduces the economic burden on the Airport by cost shifting the construction of necessary infrastructure improvements among several developments and ensuring continued, long-term maintenance of the improvements;
- The creation of a metropolitan district is anticipated to increase the marketability of Peak Innovation Park for commercial developers because cost sharing of necessary infrastructure improvements reduces the costs associated with developing adjacent parcels and provides the opportunity for the Airport to develop "pad-ready" sites;

- For the foregoing reasons, selling the Property to Purchaser for the creation of a metropolitan district provides a high probability of increasing the land values within Purchaser's particular Peak Innovation Park financial district;
- The Airport has a federal, statutory obligation to be and remain self-sustainable. For the foregoing reasons and in light of the fact metropolitan districts are an industry standard and require a board of directors, selling the Property to Purchaser affords the Airport with a high probability of continuing to comply with its federal, statutory obligations; and

WHEREAS, the Airport met with the FAA to discuss releasing the Property to Purchaser as a fee simple sales transaction and the FAA verbally agreed the intended use would be compatible with the Airport and thereby concurs with the sale of the Property to stimulate growth of Peak Innovation Park and the Airport; and

WHEREAS, the Airport followed the City process for retaining an approved appraiser who is in the process of determining the fair market value ("FMV") of the Property. In compliance with FAA regulations, City Code § 7.7.1803, and the Real Estate Manual, the City shall negotiate a value equal to or greater than fair market value for the sale of the Property; and

WHEREAS, the Airport recommends disposal of the Property to Purchaser, as the one logical potential purchaser in accordance with the Real Estate Manual and City Code § 7.7.1804 (B).

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

Section 1. City Council finds that the sale of the Property, described and depicted in **Exhibit B** is in compliance with the City's Real Estate Manual, the City Charter, the City Code, and all other applicable laws.

Section 2. In accordance with City Code § 7.7.1804 (B) and the Real Estate Manual, Chapter 5, City Council finds, for the reasons set forth in the recitals above, Purchaser, is the one logical, potential purchaser of the Property.

Section 3. In accordance with Chapter 5, § 5.4 of the Real Estate Manual, City Council hereby authorizes the sale of the Property to Purchaser, for not less than FMV as established by the City's real estate appraisal and subject to the applicable terms and conditions of the Real Estate Manual; FAA regulations, including all required deed restrictions; and all contractual obligations negotiated by the parties.

Section 4. Pursuant to the Real Estate Manual, Chapter 2, § 2.11, the City's Real Estate Services Manager is authorized to execute all documents necessary to complete the disposition of the Property and to obtain the Mayor's signature on the Quitclaim Deed to convey the Property to Purchaser.

Section 5. The Mayor is authorized to sign all necessary petitions and other documents for the inclusion of certain real property into the boundaries of the Peak Metropolitan District.

Dated at Colorado Springs, Colorado this ____ day of _____, 2018.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

EXHIBIT – A

EXHIBIT – B

EXHIBIT – C

EXHIBIT – D