

RESOLUTION NO. 85-19

A RESOLUTION AUTHORIZING THE DISPOSAL OF SURPLUS CITY PROPERTY TO JVKHE-2, LLC, ("PURCHASER") AS THE ONE LOGICAL, POTENTIAL PURCHASER

WHEREAS, the Colorado Springs Municipal Airport ("Airport"), controls Peak Innovation Park, which is an approximate 900 acre mixed use business park development, located south of the Colorado Springs Airport terminal building, as generally depicted and described on the attached **Exhibit A** ("Peak Innovation Park");

WHEREAS, the City owns, by fee title, seven acres, more or less, of real property situated in the northwest half of Peak Innovation Park, as generally depicted and described on the attached **Exhibit B** (the "Property");

WHEREAS, In December 1977, this Property was purchased with Federal Aviation Administration ("FAA") grant funds, for the purpose of noise abatement and runway protection;

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

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

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") authorize the disposal of surplus property to the only one logical, potential purchaser upon City Council approval;

WHEREAS, the Property has remained undeveloped greenfield since before the City acquired it forty two years ago and no company, organization, or developer has shown any interest in the Property since the City has owned it;

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 UFCS, Airport, LLC, ("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*;

WHEREAS, since 2007, the Property has been marketed by the Airport and both of its masterdevelopers; and

WHEREAS, the master developer's primary obligations are to coordinate the development of the Airport business park as a mixed-use business park, including: (i) providing market and economic research and/or analysis for the development of the business park, (ii) providing site work and design standards, (iii) providing marketing and promotion of the Property to and communications with prospective Lessees and/or Buyers, (iv) facilitating negotiations of leases and/or sales of the business park property, and (v) facilitating necessary approvals and coordinating financing on behalf of the City for improvements to the business park property;

WHEREAS, the development of a business park for the benefit of the Airport is unprecedented within the City and necessarily requires the City to strategically sell a certain percentage of the land to private companies and other organizations on a case-by-case basis and subject to City Council's and the FAA's approval;

WHEREAS, Purchaser initiated discussions for the sale of the Property with the Airport for the purpose of constructing a Courtyard by Marriott hotel and a Residence Inn by Marriott (or equivalent brand) hotel within Peak Innovation Park ("Hotel Project");

WHEREAS, the Peak Innovation Park development is in a youthful phase and therefore leasing land is not cost effective to the Airport because the Airport would need to bring in significant infrastructure (including public utilities and roadways) which the return on leases cannot adequately cover at this phase in the development. As the Peak Innovation Park development matures, then leasing can provide a value to the Airport in the short term and long term;

WHEREAS, strategically selling certain Peak Innovation Park land operates as an investment of capital because it provides momentum for additional sales and leases that likely increase the land value/revenue value to the Airport and make the business park more attractive to real estate brokers who are willing to steer their clients to the south side of the City thereby balancing City-wide economics and job creation;

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:

- The two hotels will be developed by the same developer and investors. Packaging the two hotel developments into one transaction provides a high probability of fully funding the necessary infrastructure that the Airport must bring to the project site as well as provide an adequate funding source for Peak Metro District which will, when fully funded, reimburse the Airport for its infrastructure cost with a reimbursement interest rate of seven percent.

- Under the federal Opportunity Zone Program, Colorado's Governor designated Peak Innovation Park as a low-income and distressed zone. As a result, the Property is eligible to receive private investments through Opportunity Zone funds. This hotel developer is choosing to invest significant capital into the Opportunity Zone for the purpose of providing equal economic growth and employment opportunities to the Colorado Springs community in exchange for deferred capital gains taxes. In order to receive the Opportunity Zone Program benefits, a sale of the land would be required.

- This transaction will bring property tax revenue, sales tax revenue and employment opportunities that will carry long-term benefits for the Airport and City as a whole. These factors provide a high probability of producing a catalyst for further economic development of Peak Innovation Park, while supporting the current Airport users, tenants, and other occupants.

- Westside general aviation Airport tenants have expressed the need for on-Airport hotel and hospitality services to serve their customers.

- Selling the Property to Purchaser for the intended use as a high-class hotel facility and conference center fits within the compatible land uses of the Airport.

- There are no utilities located within the Property site and minimal utilities adjacent to the site. There is no access roadway directly to the Property, the Property and surrounding areas are undeveloped "greenfield". These hotel projects will provide mainline utilities, a secondary roadway, and telecommunication equipment and services. This is anticipated to increase the marketability and land value of Peak Innovation Park because development of the property lowers the infrastructure improvement costs associated with the adjacent parcels and provides for efficient, faster development of adjacent parcels to include the development of pad-ready sites;

- No other company has contacted the Airport with the ability to provide two large-scale hotel development project in conjunction with a proven top tier operator.

- This hotel developer, in particular, has agreed to include a public improvement fee (PIF) as part of the deal that will provide revenues for bonding of infrastructure and operation services of the airport. Accordingly, this development opens the door for Metropolitan District funding and potential repayment of infrastructure costs to the Airport.

- This developer has agreed to a public development covenant to be developed on the public land that will provide long term benefits to the Airport in the form of public improvement revenues.

- Selling the Property to Purchaser for the intended use as a Courtyard by Marriott hotel and Residence Inn by Marriott hotel (or a similar brand approved by the City) enhances the probability of attracting increased travel through the Airport and, therefore, selling the Property to Purchaser, in particular, creates a solid synergy with the Airport.

- Purchaser is a high-end hotel developer with financials. Bringing the Marriott brand to Peak Innovation Park as an "anchor" hotel development raises the business park's and the Airport's prestige and recognition. This, in turn, creates a high probability of increased air travel to/from the Airport and further development of the business park.

- Purchaser's development will likely benefit adjacent sites within Peak Innovation Park by providing necessary utilities and roadway access within the area.

- The Airport has a federal, statutory obligation to be and remain self-sustainable. This federal mandate is a primary basis for establishing the business park development project. For the foregoing reasons and in light of the fact that no other company offering a development of Purchaser's quality or size has contacted the Airport with interest in developing the Property, selling approximately seven acres of business park land to Purchaser increases the probability that the Airport will continue to comply with its federal, statutory obligations and sustain the long-term viability of the Airport.

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

WHEREAS, the Airport followed the City's process for retaining an appraiser, who is in the process of providing the fair market value ("FMV") of the Property. In compliance with FAA regulations, City Code§ 7.7.1084(8), and the Real Estate Manual,

the City shall negotiate a value equal to or greater than FMV 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 City Code 7.7.1804(B) and the Real Estate Manual.

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 only 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: (i) for not less than FMV as established by the City's real estate appraisal process; (ii) subject to the applicable terms and conditions of the Real Estate Manual; (iii) subject to FAA regulations, including all required deed restrictions; and (iv) subject to 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 and other necessary documents to convey the Property to Purchaser.

Section 5. City Council finds that often an initial purchaser may create a new

company with materially the same principles or members and therefore, City Council grants authority to sell the Property to a newly created company so long as the principles or members are substantially the same as those of JVKHE-2, LLC.

Dated at Colorado Springs, Colorado this 24th day of September, 2019.



Council President

Attest:


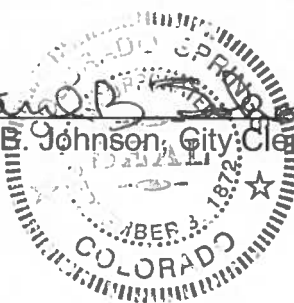
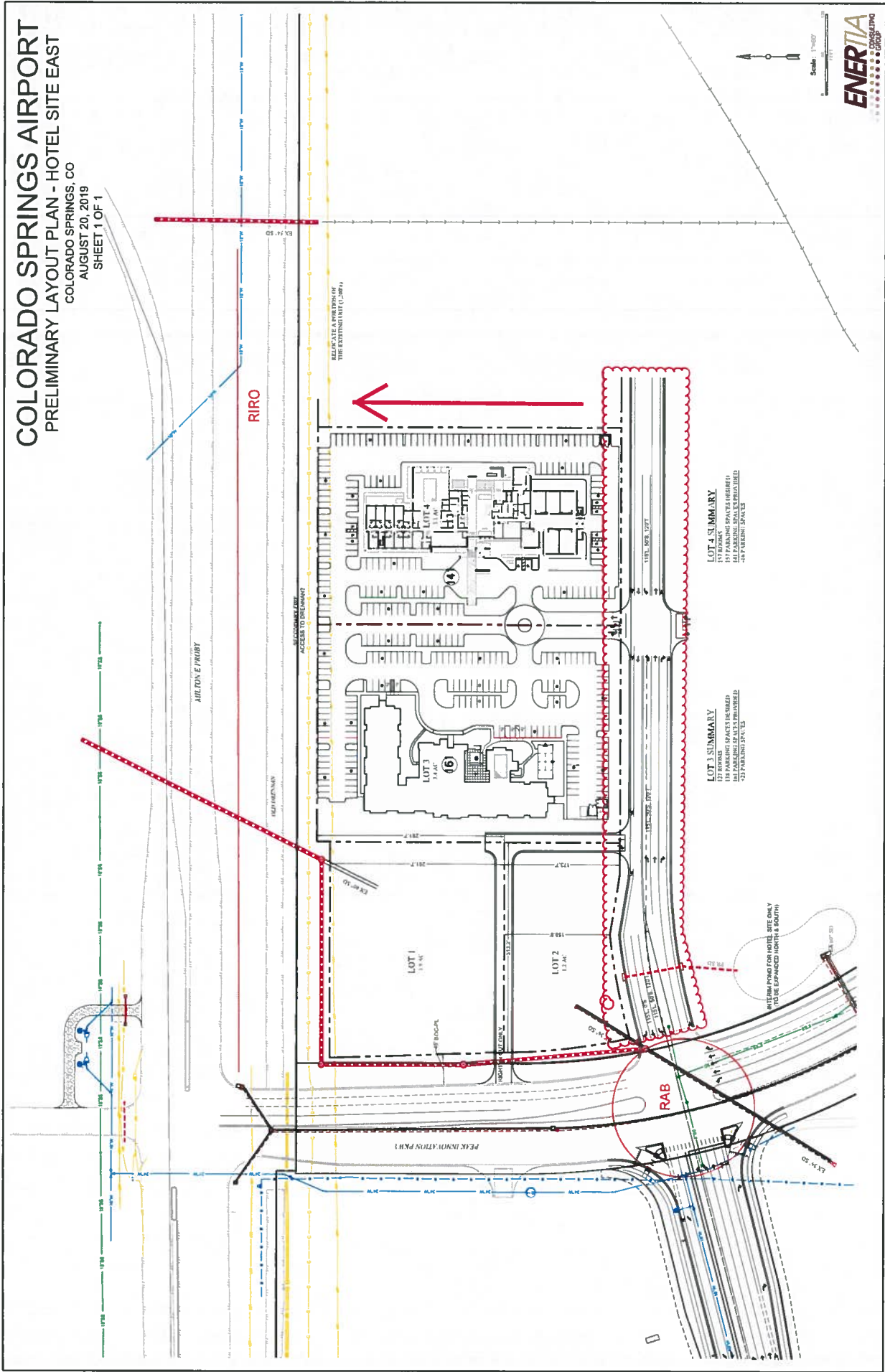

Sarah E. Johnson, City Clerk


EXHIBIT A

EXHIBIT B

COLORADO SPRINGS AIRPORT PRELIMINARY LAYOUT PLAN - HOTEL SITE EAST

COLORADO SPRINGS, CO
AUGUST 20, 2019
SHEET 1 OF 1



LOT 4 SUMMARY
 - 17 ROOMS
 - 100 PARKING SPACES PROVIDED
 - 100 PARKING SPACES PROVIDED
 - 100 PARKING SPACES

LOT 3 SUMMARY
 - 17 ROOMS
 - 100 PARKING SPACES PROVIDED
 - 100 PARKING SPACES PROVIDED
 - 100 PARKING SPACES

WATER POND FOR HOTEL SITE ONLY
 TO BE EXPANDED NORTH & SOUTH



ENERTIA
 CONSULTING & GROUP

EXHIBIT C

INSTRUMENT OF RELEASE

THIS INSTRUMENT OF RELEASE, made by the United States of America, acting through the Federal Aviation Administration to the City of Colorado Springs, Colorado.

WHEREAS,

The United States, acting by and through the Administrator, Federal Aviation Administration granted Federal Funds for land acquisition and development of the Colorado Springs Municipal Airport, in Grant Agreements numbered 6-08-0010-02 and 06-08-0010-05; and

WHEREAS,

Said Grant Agreements provide that said land is for airports use, and

WHEREAS,

The Administrator of the Federal Aviation Administration has determined that the hereinafter described land no longer serves the purpose for which it was acquired and made subject to certain terms, conditions, reservations and restrictions in said Grant Agreement.

NOW THEREFORE, for and in consideration of the City of Colorado Springs, Colorado, expending funds on grant eligible terminal development and the further benefits to accrue to the United States and to civil aviation, the Administrator of the Federal Aviation Administration, on behalf of the United States, hereby releases unto the City of Colorado Springs, Colorado, the hereinafter described real property subject to the following provisions and reservations:

1. That the City of Colorado Springs, Colorado agrees to continue to be bound by and further agrees to reserve unto itself, its successors and assignees in any instruments of transfer conveying title or interest in the hereinafter described real property, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the said airspace and for the use of said airspace for landing on, taking off from, or operating on the Colorado Springs Airport.

2. That the City of Colorado Springs, Colorado expressly agrees for themselves, their successors and assignees to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to a height consistent with 14 CFR Part 77. The City of Colorado Springs pledges that any necessary 7460-1 analysis will be completed prior to commencing vertical construction within the subject parcels. As of the date of this letter, the Federal Aviation Administration recommends that building heights not exceed 6,126 feet above sea level on Section 5 and westerly portion of Section 4; and 6,133 feet above sea level on Section 6 of Parcels 19A-B, 10B, 17, 21A, 20A-B and 21B2-B. However, both parties acknowledge that these allowable heights serve as a guide and buildings heights may exceed these limits or may be restrictive under these limits based on the appropriate 14 CFR Part 77 analysis to be completed prior to vertical construction commencing.
3. That the City of Colorado Springs, Colorado expressly agrees for themselves, their successors and assignees to prevent any use of the hereinafter described real property which would interfere with landing or taking off of aircraft at the Colorado Springs Airport, or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, the grantor is to reserve the right to enter upon the land released hereunder and to remove the offending structure or object and to cut the offending growth, all of which shall be at the expense of the grantees.

By this Instrument of Release, the United States of America by and through the Administrator, Federal Aviation Administration, hereby releases the real property described below from all the remaining conditions, reservations and restrictions except those reserved herein, contained in the identified Grant Agreements.

The real property is located in the County of El Paso, State of Colorado, and legally described as follows:

All that certain Tract or Parcel of land in Section 31 and the Southeast quarter, Section 32, Township 14 South, Range 65 West of the Sixth Principal Meridian, City of Colorado Springs, El Paso County, Colorado, being described as follows:

Basis of Bearings: The southerly line of the Southwest quarter of Section 4, Township 15 South, Range 65 West, being monumented on the East end by 3 1/2"

aluminum cap stamped "RLS 10377", and at the West end by a 2 1/2" aluminum cap stamped "PLS 17664", being assumed to bear N89°51'15"W, a distance of 2636.20 feet.

Commencing at the South quarter corner to said Section 4, thence N89°51'15"W on the southerly line of said Southwest quarter and the southerly line of said Lot 2, a distance of 1734.20 feet to the point of beginning;

Thence continuing on the southerly line of said Lot 2 the following two (2) courses;

1. N89°51'15"W, a distance of 902.00 feet;
2. S89°34'00"W, a distance of 2618.33 feet;

Thence on the southerly and westerly line of said Lot 2 and the northerly and easterly line of Powers Boulevard as recorded in Book 5307 at page 1472 the following five (5) courses;

1. S89°35'33"W, a distance of 2678.10 feet;
2. S89°03'27"W, a distance of 2650.91 feet;
3. S89°03'28"W, a distance of 818.06 feet to a point of curve;
4. On the arc of a curve to the right, whose center bears N00°56'32"W, having a delta of 90°10'39", a radius of 1895.00 feet, a distance of 2982.53 feet to a point of tangent;
5. N00°45'53"W, a distance of 3410.72 feet;

Thence N00°45'53"W, on the easterly line of said Powers Boulevard and the westerly line of Lot 1 of said Colorado Springs Airport and Industrial Park, a distance of 220.00 feet;

Thence N89°33'22"E, a distance of 2011.64 feet;

Thence N00°27'36"W, a distance of 1536.35 feet;

Thence N89°17'34"E, a distance of 5385.24 feet;

Thence S00°30'05"E, a distance of 1657.01 feet;

Thence N89°30'14"E, a distance of 1640.30 feet;

Thence S00°25'41"E, a distance of 2235.59 feet;

Thence N89°34'07"E, a distance of 1552.85 feet;

Thence N00°27'20"W, a distance of 2148.01 feet to the southerly line of Lot 1, Colorado Springs Airport Filing No. 1 recorded under Reception No. 201029279;

Thence N89°11'37"E, along said southerly line, a distance of 15.91 feet;

Thence N89°11'37"E, along southerly line of Lot 1, Colorado Springs Airport and Industrial Park Filing No. 2, recorded under Reception No. 94150257, a distance of 119.69 feet;

Thence N89°24'29"E along the southerly line of said Lot 1, a distance of 911.07 feet;

Thence S00°02'11"E, a distance of 5317.29 feet to the point of beginning.

Containing a calculated area of 1546.8981 acres.

By its acceptance of this Instrument of Release the City of Colorado Springs, Colorado covenants and agrees for itself, its successors and assigns to comply with and observe all the limitations set forth herein, expressly limited to the above described property.

The Airport Layout Plan and the Exhibit "A" Property Map must be revised to reflect the revised airport boundaries.

IN WITNESS WHEREOF the United States of America has caused this Instrument of Release to be executed as of the 14th day of June 2006.

UNITED STATES OF AMERICA

Administrator,

Federal Aviation Administration

By *Eric A. Sparks*
Manager, Denver Airports District Office

ATTEST:

ACCEPTED:

By *Kathryn M. Young*
City Clerk

By *[Signature]*
Aviation Director, City of Colorado Springs

APPROVED: _____
City

APPROVED AS TO FORM
[Signature] 7/3/06
SENIOR ATTORNEY
CITY OF COLORADO SPRINGS