

PUBLIC IMPROVEMENT INTERGOVERNMENTAL AGREEMENT

THIS PUBLIC IMPROVEMENT INTERGOVERNMENTAL AGREEMENT (the “**Agreement**”) is made and entered into this ____ day of _____, 2023 (the “Effective Date”), by and between the **CITY OF COLORADO SPRINGS**, a Colorado municipal corporation and home rule city (the “**City**”), by and through its enterprise, the Colorado Springs Municipal Airport (“**Airport**”) (the Airport and City shall be collectively referred to herein as “**COS**”), and **PEAK METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. COS owns certain real property located in El Paso County, Colorado, and is developing thereon a phased mixed-use business park commonly known as “Peak Innovation Park” (hereinafter referred to as the “**Project**” or “**Peak Innovation Park**”).

B. The District was organized pursuant to a Consolidated Service Plan approved by the City Council for the City on August 28, 2018, as amended by that First Amendment to the Consolidated Service Plan approved on February 12, 2019, and as amended by that Second Amendment to the Consolidated Service Plan approved on March 22, 2022 (as it may be further amended or restated from time to time, the “**Service Plan**”), for the purpose of providing certain public improvements and services to and for the benefit of properties within the service area of the District.

C. The Service Plan authorizes the District to, among other things, finance and construct certain public improvements, including but not limited to, water, sanitation, street, safety protection, park and recreation, public transportation, and mosquito control improvements as more generally described in the Service Plan (the “**Public Improvements**”).

D. The District and UFCS Airport, LLC, a Colorado limited liability company (including its successors or assigns, the “**District Developer**”), entered into that certain Facilities Acquisition and Payment Agreement dated November 30, 2022 (as may be amended from time to time, the “**Developer FAPA**”), whereby the District Developer agreed, on behalf of the District, to construct certain of the Public Improvements and fund the associated Construction Costs (as such term is defined in the Developer FAPA) and, to the extent the requirements of the FAPA are met, the District agreed to reimburse the District Developer for the Construction Costs associated with the constructed Public Improvements in accordance with the terms therein.

E. The District previously issued its Limited Tax General Obligation Bonds, Series 2022A-1 in the principal amount of \$18,250,000 (the “**2022A-1 Bonds**”) and its Limited Tax General Obligation Convertible Capital Appreciation Bonds, Series 2022A-2 in the initial principal amount of \$45,530,552 (the “**2022A-2 Bonds**”) and collectively with the 2022A-1 Bonds, the “**Bonds**”) for the purpose of, among other things, funding and reimbursing a portion of the costs associated with construction and installation of Public Improvements that benefit the property within the service area of the District.

F. COS intends to develop the Project in accordance with the Peak Innovation Park Concept Plan Amendment 1 dated January 17, 2018 (as may be further amended or restated from time to time, the “**Concept Plan**”), as approved by the City on January 29, 2019. In furtherance of its development activities for the Property, COS will be required to complete, or cause to be completed, improvements, facilities, structures and other infrastructure necessary to service the operation and use of the Project as contemplated by the Concept Plan (collectively, the “**Project Infrastructure**”). The Project Infrastructure may be generally described on one or more final plats encumbering the Project as approved by the City, through requisite processes of the City (collectively, the “**Final Plats**”) and/or through design, engineering and construction plans approved by COS in connection with the phasing development of the Project (the “**Plans**”).

G. A portion of the Project Infrastructure will comprise of certain Public Improvements that are required to be constructed in order to develop the Project in accordance with the Concept Plan (the “**Project Public Improvements**”). The scope of the Project Public Improvements will be determined by COS as development of the Project progresses in phases and will be further described in the Final Plats and/or the Plans.

H. COS desires to delegate to the District the obligation to finance and cause the construction of the Project Public Improvements and the District desires to accept the delegation to cause the construction of Project Public Improvements and to finance the same with proceeds from the Bonds in accordance with the terms of this Agreement.

I. COS and the District are authorized by Article XIV, Section 18 of the Colorado Constitution and Section 29-1-203, Colorado Revised Statutes, as may be amended, to cooperate and contract with each other to provide any function, service or facility lawfully authorized to each.

J. COS and the District desire to set forth their respective rights, obligations, and procedures with respect to the construction and finance of the Project Public Improvements as provided herein.

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

COVENANTS AND AGREEMENTS

1. **Project Public Improvements.** The District, either directly or with the efforts and cooperation of the District Developer and other Service Providers (as defined below), has, and/or will in the future, cooperatively work with COS to develop, design and submit final construction plans relative to the construction, completion, and installation of the Project Public Improvements, in a scope approved by COS in accordance with the Final Plats and Plans (collectively, the “**Construction Plans**”) and within a timetable (the “**Construction Timeline**”) and a construction budget (the “**Construction Budget**”) reasonably acceptable to both Parties. The District, either directly or with the efforts and cooperation of the District Developer and other Service Providers, shall coordinate, administer, and oversee: (i) the preparation of all budgets, schedules, contracts, and other documents pertaining to the Project Public Improvements; and (ii) the planning, design, engineering, testing, construction, and installation

for the Project Public Improvements according to the Construction Plans. The District has engaged through contract, and will continue to engage through contracts with the District Developer or with , engineers, surveyors, and other consultants and construction contractors (the “**Service Providers**”), and the District has and/or will contract with the District Developer as reasonably necessary to complete the Project Public Improvements. The Parties acknowledge that the following agreements have been executed prior to this date of this Agreement: (i) AIA Document A102-2017, Standard Form of Agreement Between Owner and Contractor (with related exhibits) executed on April 13, 2023 by and between W.E. O’Neill Construction Company of Colorado (“**O’Neill**”) and District Developer as supplemented by that certain Addendum to AIA A102 Standard Form of Agreement Between Owner and Contractor (Peak Metro District #1 Peak Lift Station) dated effective April 11, 2023 executed by O’Neill, District Developer and COS (collectively, the “**Peak Lift Station Contract**”) with respect to the work associated with Peak Metro District No. 1-Peak Lift Station; and (ii) AIA Document A103-2017, Standard Form of Agreement Between Owner and Contractor (with related exhibits) executed on April 13, 2023 by and between O’Neill and District Developer as supplemented by that certain Addendum to AIA A103 Standard Form of Agreement Between Owner and Contractor (Peak Innovation Park-Integration Loop Phase 3) dated effective April 11, 2023 executed by O’Neill, District Developer and COS (collectively, the “**Peak Integration Loop Contract**”) with respect to the work associated with Peak Innovation Park-Integration Phase 3. COS has reviewed and approved the Peak Lift Station Contract and the Peak Integration Loop Contract, including, without limitation, the budget, construction timeline and scope of work contemplated thereby. Notwithstanding anything to the contrary contained herein, COS hereby acknowledges and agrees that the terms and conditions set forth in the Peak Lift Station Contract and the Peak Integration Loop Contract shall govern and control to the extent they conflict with, or are inconsistent with, the terms and conditions contained in this Agreement. Further, to the extent the District or the District Developer has entered into contracts with Service Providers prior to the execution of this Agreement with respect to Project Public Improvements (the “**Existing Contracts**”), and provided the scope of work contemplated by the Existing Contracts are within the scope of the Construction Plans or otherwise previously approved by COS, no changes or alterations to any such Existing Contracts shall be required, notwithstanding this Agreement.

2. Design and Construction of Public Project Improvements.

2.1 The District, either directly or with the efforts and cooperation of the District Developer and other Service Providers, will cause the construction and completion of the Project Public Improvements in accordance with the Construction Plans for dedication or transfer to the appropriate governmental entity upon satisfactory completion together with any required warranty. Upon written request, the District shall provide regular progress reports (“**Progress Report**”) to COS and shall include in such Progress Reports information on the services and Service Providers that the District currently has under contract for the Project Public Improvements.

2.2 Legal Requirements. The District shall comply with all applicable local, state, and federal laws, rules, and regulations of any and all applicable controlling local, state, and federal entities in the performance of this Agreement.

2.3 Taxes, Fees, and Permits. The District and/or its Service Providers shall pay all applicable sales, use, and other similar taxes and fees pertaining to the Project Public Improvements, if any, and the District acknowledges that such costs shall be included in the costs submitted for verification hereunder; provided, however, that the District agrees that it and its Service Providers shall use commercially reasonable efforts to take advantage of any and all applicable tax exemptions available to the District, and any such taxes erroneously paid shall not be included in the District's costs.

2.4 Insurance. While engaging in any work on, over, and under the Project, or any portions thereof, the District shall procure and maintain and shall cause the Service Providers to procure and maintain, insurance policies in legally required or commercially reasonable amounts or with such coverage or amount as may be required by COS. To the extent commercially available, the District shall cause Service Providers to list COS an additional insured in such policies and the District will furnish certificates of insurance coverage to COS where it is listed as an additional insured following written request by COS. Without creating payment or performance obligations, COS shall execute joinder instruments as may be necessary to identify COS as an owner or party as needed to list COS as an additional insured under engineering and general contractor Service Provider contracts. The inability of the District to cause Service Providers to list COS as an additional insured in accordance with this Section shall not be a default under this Agreement.

2.5 Indemnification. For engineering and general contractor Service Providers, the District shall use commercially reasonable efforts to cause to be included in any contract with such Service Providers a standard indemnification in favor of COS substantially as follows: “[Service Provider] shall fully protect, defend, indemnify and hold harmless COS, its officers, City Council, employees, agents and representatives from and against any and all claims costs (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature to the extent caused by the willful misconduct or negligent, reckless or tortious acts or omissions of [Service Provider] or anyone for whose acts [Service Provider] may be liable in the performance of its obligations,” or similar indemnification language approved by COS. Without creating payment or performance obligations, COS shall execute joinder instruments as may be necessary to identify COS as an owner or party as needed to list COS and an indemnified party under engineering and general contractor Service Provider contracts. The inability of the District to cause Service Providers to include the indemnification in accordance with this Section shall not be a default under this Agreement.

2.6 Standards of Care, Skill, and Diligence. The District agrees that all services to be provided pursuant to this Agreement shall be performed by individuals or entities having all certifications, registrations, or licenses as may be required by applicable local, state, and federal laws governing the particular field of services provided, and the services shall only be performed by individuals and entities who possess the capacity and the professional experience and skill to perform the services in accordance with the standards of care, skill, and diligence provided by competent entities to perform work of a similar nature and in the same or similar locality.

2.7 Construction Service Provider Warranties and Specifications. From and after the Effective Date of this Agreement, the District shall require, and shall require the District Developer to require, in any contract executed with Service Providers for work contemplated by this Agreement, to include a two-year warranty after completion and acceptance of any Public Project Improvements. Furthermore, with respect to any contracts with Service Providers for Public Project Improvements that are utility facilities intended for transfer to Colorado Springs Utilities (“**CSU**”), the District shall require, and shall require the District Developer to require, that all such contracts will provide (i) that warranty periods extend from the date CSU accepts the facilities into its public water or wastewater systems until two years thereafter, and if corrections to defects or failures occur within such two years, the warranty period will be extended an additional one year from the date of correction if such extended date is beyond the initial two year period and (ii) that facilities will be constructed in accordance with CSU’s Line Extension and Service Standards and other standard requirements for CSU.

2.8 Additional Service Provider Conditions. From and after the Effective Date of this Agreement, the District will, and shall require the District Developer to inform COS of the manner of solicitation or bidding for construction contracts, and the District will endeavor, and shall require the District Developer to endeavor, to include in any general contractor construction contract with Service Providers, to the extent commercially available or applicable, such reasonable terms and conditions as requested by COS, together with (i) provisions requiring approval by the District or the District Developer, whichever is applicable, before implementing any change orders beyond the approved scope of the Construction Plans, Construction Budget or Construction Timeline for Public Project Improvements, (ii) provisions requiring bonding to secure performance and payment as required for projects on municipally owned property by law, and (iii) provisions concerning unlawful discrimination set forth in Exhibit A attached hereto and made a part hereof.

3. Accounting and Reporting.

3.1 Bookkeeping. During the term of this Agreement, the District shall keep or cause to be kept, accurate and current books and accounts in which are recorded the costs associated with the development of the Project Public Improvements, and all the District’s administrative and management expenses incurred in fulfillment of its obligations hereunder. Unless otherwise exempted under applicable law, the District shall prepare after the close of each fiscal year, a complete audited financial statement for such year in reasonable detail covering the above information, certified by a public accountant selected by the District, and the District shall furnish a copy of such statement to COS upon its completion and approval by the District. The District shall keep its books and accounts in sufficient detail to provide the payment of the same, which books and records shall be made available at any time for review (upon reasonable prior written notice) by COS.

3.1.1 The District shall provide regular oral or written report to COS as to the general progress made in the design and construction of the Project Public Improvements. Such report may be provided at District meetings during the term of this Agreement.

3.1.2 The District has retained an independent engineer (the “**Independent Engineer**”) which will, among other services, review and report to the District

which of the costs incurred by the District Developer, or other third-party, are eligible for reimbursement from available tax-exempt revenues and bond proceeds of the District.

3.1.3 The District agrees to, on a routine and timely basis, report all costs incurred by the District pursuant to this Agreement to the Independent Engineer and provide such records of the costs and other information as necessary to allow the Independent Engineer to determine the associated Verified Costs (defined below).

3.1.4 The Independent Engineer shall verify that the costs, through the final acceptance of Project Public Improvements by the appropriate jurisdiction, including but not limited to, the cost incurred in the design, construction, permitting, bonding, insuring, management, legal costs, and other services directly related to the same (the “**Work**”) are reasonable and within market parameters for the Work, that the Work was confirmed to be for the Project Public Improvements represented, and that the Service Providers of the Work have been paid for the Work (“**Verified Costs**”).

4. COS Right to Review Construction; No Liability. (a) The Parties acknowledge and agree COS shall have the right to engage its own engineer, project manager or other consultants (“**City Service Provider**”) to review the Construction Plans, Construction Timeline, Construction Budget and the Work (the “**Work Review Documentation**”). Until such time as COS provides the District written confirmation of who will serve as the City Service Provider under this Agreement, COS hereby designates Troy Stover, Business Park Development Director, as the authorized representative of COS to serve in the capacity as the City Service Provider. Any written approval or disapproval by the City Service Provider shall be deemed valid and enforceable against COS, and the District, and the District Developer, are expressly permitted to exclusively rely upon such written decision made by the City Service Provider. The District agrees to give, and to cause the District Developer to give, reasonable access to the Work Review Documentation as may be necessary for the City Service Provider to review the same. Furthermore, upon written request of COS, the District agrees to give, and to cause the District Developer to give, COS the results of any construction tests and/or inspections they perform, or that Service Providers provide to the District or District Developer concerning the work. As a part of the City Service Provider’s scope of review, the City Service Provider shall be afforded an opportunity to review the Construction Plans prior to their inclusion in any Service Provider construction contract. COS, through its City Service Provider, may, but is not obligated to, require minimum specifications to be included in Construction Plans, to include but not limited to specifications of CSU. Notwithstanding anything to the contrary contained in the foregoing, If the City Service Provider fails to provide to the District any approval or disapproval for the Work Review Documentation, or any portion thereof, within ten (10) business days after written request therefor, the matter subject to any such approval or disapproval will be irrevocably deemed approved by COS.

(b) Notwithstanding any review, approval or addition of any specifications as described in Section 4(a) above, the Parties expressly acknowledge and agree that the District, the District Developer, the City Service Provider and COS’s review and approval of the scope of any portion of the Work Review Documentation shall not constitute an approval or ratification by the District, the District Developer, the City Service Provider or COS of any design, engineering or construction by the Service Providers, and the Service Providers shall remain

solely liable and responsible for the completeness, accuracy, and fitness of, and for the intended purpose of any Construction Plans and completed construction; and COS and the District hereby expressly waive, disclaim, and release each other and the District Developer from any and all claims, costs, expenses, losses, damages, causes of action, or liability of any nature whatsoever related to the completeness, accuracy, fitness of, and for the intended purpose of the Construction Plans and the installation and construction of the Public Improvements approved by COS after this Agreement, it being expressly acknowledged and agreed to by the Parties that the Service Provider who completed the work under respective contracts shall be the responsible party. Provided, however, that the District will use commercially reasonable efforts, and shall cause the District Developer to use commercially reasonable efforts to, if in privity with the Service Providers' contracts, enforce the terms and conditions of such contracts, and the warranties and standards of care required under Section 2.6 of this Agreement. The foregoing disclaimer and release shall survive the termination of this Agreement.

5. Access to Project Public Improvements. Where generally necessary and applicable, the Parties hereby grant to each other, and their respective contractors and consultants, limited licenses to access all property owned or controlled by the other, as is reasonably necessary to exercise the rights and fulfill the obligations of this Agreement, such licenses shall expire as to the Project Public Improvements upon the acceptance by the appropriate accepting jurisdiction or upon termination of this Agreement. The District shall use reasonable efforts to require any such licenses are subject to the standard licensing provisions for the use of COS property.

6. Conveyance to Accepting Jurisdictions. Upon acceptance, to the extent required by the Federal Aviation Administration, Project Public Improvements, unless transferred or conveyed to another accepting jurisdiction, shall be owned by COS. The District agrees it will, following completion of any Project Public Improvements, coordinate to facilitate the timely final conveyance of applicable Project Public Improvements to the appropriate accepting jurisdiction(s), including but not limited to facilitating the completion of any and all warranty or other requirements of such accepting jurisdiction(s), as appropriate.

7. Funding of Project Public Improvements. The Parties acknowledge and agree the District has and will in the future issue bonds, including the currently outstanding Bonds, to finance the Project Public Improvements. Further, the District has and will enter into agreements whereby the District will be obligated to pay for or otherwise reimburse for costs associated with installation of the Project Public Improvements (“**Reimbursement Agreements**”). Any such Reimbursement Agreements will directly govern the requirements of any such reimbursements and will establish the priority of payment thereunder. For the avoidance of doubt, the COS and the District agree the District is only obligated to finance and construct, or cause the construction of, the Project Public Improvements to the extent the same are authorized under the Service Plan.

8. Annual Appropriations. The Parties understand and acknowledge that the District and COS are subject to Article X, Section 20 of the Colorado Constitution (“**TABOR**”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and therefore, notwithstanding anything in this Agreement to the contrary, any financial obligations of COS

and the District contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Upon failure to appropriate such funds, this Agreement shall be terminated.

9. Governmental Immunity. The Parties intend that nothing herein shall be deemed or construed as a waiver by either Party of any rights, immunities, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.

10. 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. 3
c/o McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

To COS: City of Colorado Springs
c/o Business Park Development Director
30 S. Nevada Ave., Suite 604
Colorado Springs, Colorado 80903
Attn: Troy Stover
E-mail: Troy.Stover@coloradosprings.gov

With a copy to: Office of the City Attorney
30 South Nevada Avenue, Suite 501
Colorado Springs, Colorado 80901
Attn: David Andrews
E-mail: David.Andrews@coloradosprings.gov

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed 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.

11. Assignment. Neither COS nor the District shall assign their rights or delegate their duties hereunder without the prior written consent of the other Party.

12. Term. This Agreement shall continue in full force and effect until all obligations hereunder are satisfied unless otherwise terminated by mutual written consent of the Parties.

13. Relationship of the Parties. Nothing contained in this Agreement will be construed or interpreted as making the Parties joint venturers or partners. By executing this Agreement, no Party shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other Party or any officer or employee thereof. No agent, employee or volunteer of any Party shall be deemed an agent, employee or volunteer of the other Party under this Agreement. No Party shall have any authority to make any agreements or representations on the other's behalf.

14. 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 District and the COS 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 District and the COS shall be for the sole and exclusive benefit of the District and the COS.

15. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

16. 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 State District Court in and for the County of El Paso, Colorado.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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 District or the COS unless the same is in writing and duly executed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGE TO PUBLIC IMPROVEMENT
INTERGOVERNMENTAL AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Public Improvement Intergovernmental Agreement as of the date first set forth above.

**CITY OF COLORADO SPRINGS,
COLORADO**, a home rule city and Colorado municipal corporation, by and through its enterprise, the Colorado Springs Municipal Airport

By: _____
Blessing A. Mobolade, Mayor

Date: _____

Attest:

City Clerk

By: _____
Troy Stover,
Business Park Development Director

APPROVED AS TO FORM:

David Andrews, Office of the City Attorney

PEAK METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Garrett Baum, President

Attest:

Secretary

Exhibit "A"

NONDISCRIMINATION.

(a) Acknowledgement. [Service Provider] acknowledges that 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 City receives federal financial assistance.

(b) Definitions. As used below, the term "contractor" shall mean [Service Provider], the term "sponsor" shall mean City, and the term "contract" shall mean this [Construction Agreement].

(c) Agreements. 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 contracts 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 contracts 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 [Construction Agreement]s 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) Covenants Running with the Land. [Service Provider] 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 [Construction Agreement] 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, [Service Provider] 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) No Denial of Benefits/Exclusion. [Service Provider], 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 [Service Provider] will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

(f) Right to Terminate. In the event of breach of any of the above Non-discrimination covenants, the City will have the right to terminate this [Construction Agreement] and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this [Construction Agreement] had never been made or issued.

(g) 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 on the basis of 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).

(h) Title VI Complaints. [Service Provider] agrees to forward a copy of any Title VI complaint it receives in connection with [Service Provider]'s activities and operations at the Airport within three (3) days of [Service Provider]'s receipt of same and identify the actions taken regarding any such complaint. [Service Provider] further agrees to cooperate with City in its investigation of any Title VI complaints, including making relevant documents and records available to City for inspection upon reasonable notice, and to provide reasonable assistance to [Service Provider] 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.

(i) Aeronautical Activity. 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 purchasers