ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND PROJECT PHOENIX

This Economic Development Agreement ("Agreement") is entered into as of the [Date] day of [Month]2024 (being the date executed by the Mayor below and the effective date hereof), by and between the City of Colorado Springs, Colorado, a Colorado home rule city and municipal corporation (hereinafter called the "City") and Project Phoenix, a [Insert] corporation (hereinafter called the "Company"), under authority of City Council Resolution No. [Insert No.], dated [Month Day], 2024 (the "Resolution"). The City and the Company are hereinafter sometimes each referred to as a "Party" or collectively referred to as the "Parties."

RECITALS

The Company represents that, subject to availability of Incentives as hereinafter defined, it will make, or cause to be made, an investment of approximately $587,500,000 during the Term, as defined below, of this Agreement in capital expenditures to purchase Construction and Building Materials (as defined below), furniture and fixtures, and machinery and equipment to be used for renovating of facilities located at [Address] in Colorado Springs, Colorado (the "Facilities"), which will create an estimated 378 New Jobs (as this term is defined below in this Agreement) at the Facilities that qualify for Incentives or credits under law.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions of this Agreement set forth below, the Parties agree as follows:

AGREEMENT

The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

I. DEFINITIONS

The following terms have the meanings specified:

1. *Sales Tax* means the sales tax to be collected and remitted by a retailer on sales taxed under the City Tax Code, as defined by City Code § 2.7.103.

2. *Use Tax* means the use tax paid or required to be paid by a purchaser or consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City, as defined by City Code § 2.7.103.

3. *Conditions for Incentive* means the requirements, conditions and limitations set forth in this Agreement, the Resolution and City Code § 2.12.101, *et seq.*, if applicable.

4. *Construction and Building Materials* shall have the meaning set forth in City Code § 2.7.104

5. *Full Time Employee* or *Full Time Employees* means an employee who works an average of not less than thirty-five (35) hours per week at the Facilities.

6. *Incentive or Incentives* means the amount or amounts of an incentive payment or incentive payments paid by the City to the Company in accordance with this Agreement, the Resolution and/or City Code § 2.12.101, *et seq.*, as applicable to the Commercial Aeronautical Zone ("CAZ").

7. *Investment* means the actual reasonable amount expended by Company, which produces economic benefit to the City. The Company's commitment for Investment includes, but is not limited to, expenditures for Construction and Building Materials for building construction, remodeling and rehabilitation of the Facilities and annual purchases of business personal property, including machinery and equipment.

8. *New Jobs* means the number of Primary Jobs created and held by Full Time Employees of the Company at the Facilities that exceed the average number of jobs held by employees of the Company within the City or El Paso County, Colorado during the ninety (90) day period immediately prior to the date of this Agreement.

9. *Term* shall have the meaning set forth in Section III of this Agreement.

10. *Primary Jobs* means jobs (i) producing products or services, the majority of which generate revenue for the Company from outside of El Paso County, Colorado or (ii) producing products or services that are exported or used outside of El Paso County, Colorado, infusing new dollars into the local economy.

II. COMPANY INVESTMENT AND CITY INCENTIVES

A. The Company agrees to purchase, at the Company's cost and expense, Construction and Building Materials, furniture and fixtures, and machinery and equipment to be used at the Facilities located in the City of Colorado Springs. The Company agrees to invest a minimum of $1,000,000 (the planned Investment is $587,500,000 over five (5) years) in renovating and furnishing the Facilities, and agrees to employ new Full Time Employees in New Jobs throughout the Term of this Agreement.

B. Subject to and conditioned upon the Company's compliance with the Conditions for Incentive, the City agrees to provide economic development Incentives to the Company as follows:

1. 50% of the City's 2% general Sales Tax and Use Tax on annual purchases of business personal property purchased locally. This Incentive shall apply to the Company's Investment in business personal property, including furniture and fixtures, and machinery and equipment, during the Term of this Agreement.

2. 50% of the City's 2% general Sales Tax and Use Tax paid by Company or Company's contractors or subcontractors on taxable purchases of Construction and Building Materials purchased within the City of Colorado Springs which are incorporated into or installed upon the Facilities during the Term of this Agreement.

III. TERM

The term of this Agreement will be for a period of ten (10) years, commencing on December 1, 2024, and expiring on November 30, 2034 (the "Term"). The Parties acknowledge the Commencement Date and Term, for purposes of the Incentives, may begin prior to the effective date of this Agreement.

IV. CONDITIONS FOR INCENTIVE AND PROCEDURAL REQUIREMENTS FOR THE COMPANY TO RECEIVE INCENTIVE

A. General Conditions for All Incentives:

1. The Company agrees to invest not less than $1,000,000 (the "Minimum Investment") in Facilities Construction and Building Materials and business personal property, including

furniture and fixtures, and machinery and equipment, as described in Section II.A of this Agreement. The Company or its contractors and agents shall be responsible for obtaining and maintaining all necessary permits, licenses, and approvals to operate the Facilities and equipment and shall pay all fees related to such permits, licenses, and approvals. The Minimum Investment must be made not later than one (1) year after the Employment Commencement Date, as defined below in Section IV.A.2 of this Agreement, to receive the Incentives in year one (1) of this Agreement. Provided, however, if the Minimum Investment is not achieved in year one (1), the Company can add expenditures in subsequent years until the Minimum Investment is reached, and the Company may qualify for the Incentives during the year in which it satisfies the Minimum Investment.

2. The Company will commence operations at the Facilities and will employ not less than ten (10) new Full Time Employees in New Jobs at the Facilities on or before December 31, 2025 (the "Employment Commencement Date") and maintain those New Jobs thereafter during each calendar year for years one (1) through four (4) during the Term and employ and maintain not less than one hundred (100) Full Time Employees in New Jobs for years five (5) through ten (10) during the Term as a condition and requirement to qualify for the Incentives provided in this Agreement during the Term. For purposes of determining the new Full Time Employees and New Jobs, such new Full Time Employees must be residents of the City or El Paso County, Colorado.

3. For each year of the Term of this Agreement, the Company must provide the City with otherwise confidential taxpayer information demonstrating to the City's satisfaction that Company is meeting its employment commitment and entitlement to receive the Incentives and that allows the City to verify purchases and determine Incentive amounts. More specifically but without limiting the foregoing, the Company shall, at its sole cost and expense, prepare and submit reports to the City within thirty (30) days after the end of each calendar year during the Term of this Agreement stating the number of Full Time Employees employed in New Jobs. All reports shall be prepared from the Company's records and supported by payroll records, invoices, and other appropriate documentation. The Company shall provide copies of any reasonable additional documentation as requested by the City within seven (7) days after the City's request.

4. If the Company complies with the Conditions for Incentive and provides the reports and other documentation as required in Sections IV.A.1 through 3 above, the City will pay to the Company the appropriate Incentive amounts specified by and in accordance with the terms of this Agreement, the Resolution and/or City Code § 2.12.101, *et seq*., as applicable to the CAZ.

5. All Incentives provided under this Agreement are related solely to the Facilities and the Company's operations within the City of Colorado Springs.

6. For each year of this Agreement, the Company shall provide the City's Finance Department with signed authorization to share confidential taxpayer information to allow the City to access information reasonably required by the City in connection with determination of eligible Incentives. In addition, the Company shall make available to the City if requested, true and complete records, which support expense, payroll, tax, payment, or billing statements, reports, performance indices, and all other documentation related to the Parties' respective obligations under this Agreement. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing expense, payroll, tax, payment, or billing statements, reports, performance indices, and all other related documentation. The Company agrees that it will keep and preserve for at least

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seven (7) years all documents related to this Agreement that are routinely prepared, collected or compiled by the Company during the Term of this Agreement.

7. It is the City's intention that the Incentive amounts will be incorporated into the City's annual budget submitted to City Council for consideration and approval.

8. All Incentives are subject to annual appropriation by the City Council of the City of Colorado Springs. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget, appropriation ordinance or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure, (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

B. Sales Tax and Use Tax Incentive:

1. Within the time required by City regulations (currently three (3) years) after the date of purchase, storage, use or consumption of goods for which the incentive is claimed, the Company will complete Revenue and Collections Division form ST-19, "Claim for Refund of Colorado Springs Sales Tax and/or Use Tax," or such other form for refund claims as required by the City, and submit same to the City's Revenue and Collections Division of the City's Finance Department, along with copies of invoices for eligible purchases made within the City and a statement that the Company does not seek a tax refund. Timely filed refund claims are a condition of any incentive payment.

2. The City's Revenue and Collections Division will provide verification of Incentive amounts for which the Company is eligible to the City's Economic Development Division.

3. Upon receipt of Incentive verification from the City's Revenue and Collections Division, the City's Economic Development Division will submit a request for an Incentive payment to be issued to the Company within ninety (90) days of the verification.

V. RETURN OF INCENTIVE TO CITY

The Company shall return, within thirty (30) days after receipt of written notice from the City that an excess payment was made to the Company, any portion or all Incentives received under this Agreement to which the Company was not entitled. If the Company becomes aware that an excess payment was made and has not received written notice from the City of the excess payment, the Company shall return the funds not later than thirty (30) days after it becomes aware of the excess payment.

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VI. QUALIFIED ADDRESSES

On the effective date of this Agreement, only the Facilities within the City of Colorado Springs and operated by the Company are included in this Agreement. All New Jobs must be located at addresses associated with the qualified Facilities.

VII. INCENTIVES DISPUTES

Any dispute as to the amount of the Incentive will be resolved by the Mayor or the Mayor's designee, and the decision will be final and conclusive.

VIII. MISCELLANEOUS

1. Complete Agreement. This Agreement expresses the entire understanding of the Parties and supersedes and abrogates any and all prior dealings and understandings, whether oral or written, with respect to the subject matter of this Agreement and may not be amended or modified except in a writing signed by the Parties. Any waiver of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived. No waiver of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement. The failure of either Party to enforce or seek enforcement of the terms of this Agreement following any breach shall not be construed as a waiver of such breach.

2. Controlling Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs without regard to conflict of law principles.

3. Jurisdiction and Venue. Court jurisdiction shall exclusively be in the District Court for El Paso County, Colorado.

4. Notices. Any notices hereunder shall be sufficiently given if given in writing personally or mailed by first class, or certified mail, postage prepaid, or deposited with a national overnight courier service for next business day delivery, addressed:

   (a) if to the City:

   City of Colorado Springs
   Economic Development Department
   P.O. Box 1575, MC 640
   Colorado Springs, CO 80901-1575

   (b) if to the Company:

   Project Phoenix

   or to such other person or address as any Party shall specify in written notice given to the other party pursuant to the provisions of this Paragraph 4. Notice shall be effective (i) upon receipt, if delivered personally, or (ii) three (3) business days after deposit in the mails, if mailed, or (iii) on the next business day, if deposited with an overnight courier service.

5. Time of the Essence/Binding Effect/Assignment. Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and

assigns, provided the Company may not assign this Agreement or any interest herein without the express written consent of the City, which consent may be delayed, conditioned, or denied in the City's sole and absolute discretion. Any assignment or attempted assignment of this Agreement by the Company without such consent shall be null and void. No assignment of this Agreement or any interest herein by the Company shall release or discharge the Company from any of its obligations under this Agreement unless otherwise agreed by the City at the time consent to assignment is given.

6. Execution. The persons signing this Agreement in the name of and on behalf of the Company represent and warrant that they and the Company have the requisite power and authority to enter into, execute, and deliver this Agreement, and that this Agreement is a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms.

7. No Commission Payments by City. The Company represents and warrants that no person, entity, or organization has been employed or retained, or will be employed or retained, who may claim from the City any commission, percentage, contingent fee or any other remuneration payment or receipt from the Incentives. For breach or violation of this warranty, the City shall have the right to terminate this Agreement.

8. No Damages. In no event shall the City, its officers, agents or employees be liable to the Company for damages, including without limitation, compensatory, punitive, indirect, special or consequential damages, resulting from or arising out of or related to this Agreement or the performance or breach thereof by the City or the failure or delay of the City in the performance of any covenant or provision under this Agreement on its part to be performed. In consideration of the City entering into this Agreement, the Company hereby waives and discharges the City, its officers, agents and employees from all claims for any and all such damages. No breach, default, delay or failure of the City under this Agreement shall be or be construed to be a waiver, discharge or release of the Company's obligations hereunder.

9. No Agency Created. The Company is an entity independent from the City and shall not be deemed an agent of the City, nor shall it have the authority to modify this Agreement or to bind the City to any amendment. It is expressly agreed that the City shall have no liability whatsoever for any breach of any lease or other agreement or obligation between the Company, the Company's tenants and/or sub-tenants.

10. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.

11. No Joint Venture Created. No Party shall be, or hold itself out as, agent of any other or as joint ventures under this Agreement.

12. Interpretation. Each Party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

13. No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of, this Agreement.

14. Open Records Acknowledgment. The Company acknowledges that the City is subject to the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 *et seq*. and that this Agreement may be subject to disclosure to third parties, upon request, thereunder.

15. Headings. The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions or the interpretation or construction of this Agreement.

16. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.

IX. ADDITIONAL PROVISIONS

During years one (1) through four (4) of the Term of this Agreement, and as a condition to qualify for and to receive an Incentive for any calendar year, the Company must have employed a minimum of ten (10) Full Time Employees in New Jobs (determined according to Section IV.A.2) at the Facilities; furthermore, for years five (5) through ten (10) of this Agreement, and as a condition to qualify for and to receive an Incentive for any calendar year, the Company must have employed a minimum of one hundred (100) Full Time Employees in New Jobs (determined according to Section IV.A.2) at the Facilities. The Company shall provide the City with documentation of the New Jobs requirement each year during the Term as provided in this Agreement. For any calendar year in which the Company does not employ the required minimum number of Full Time Employees in New Jobs, or for which the Company fails to provide documentation thereof, no Incentive shall be paid to Company for that Calendar year. Provided this Agreement is still in effect, if the minimum number of Full Time Employees in New Jobs is reached in a subsequent calendar year, the company may apply for the Incentives for such calendar year, subject to Section IV.B.1.

Executed at Colorado Springs, Colorado, effective as of the date first above written.

PROJECT PHOENIX

By: _____ _____
_____ Date
Its:_____

THE CITY OF COLORADO SPRINGS

By: _____ _____
Blessing A. Mobolade, Mayor Date

APPROVED AS TO FORM:

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By: _____
Office of the City Attorney

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