

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of the 8<sup>th</sup> day of June, 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 INNOVATION, LLC**, a Delaware limited liability company (“**Peak Innovation**”). COS and Peak Innovation are sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

### RECITALS:

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

B. Pursuant to the terms of that certain Purchase and Sale Contract dated effective December 15, 2022 (as amended, the “**Purchase Agreement**”), Peak Innovation (as successor-by-assignment from Suncap Property Group, LLC, a North Carolina limited liability company) has acquired from COS (the “**Purchase**”) a portion of the Peak Innovation Park consisting of approximately 12.693 acres and legally described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”).

C. Pursuant to the Purchase Agreement, certain infrastructure improvements and other development tasks are required to be constructed and performed in the Project and within the boundaries of the Property following the closing of the Purchase, as more particularly described and depicted on Exhibit B and Exhibit B-1 attached hereto and incorporated herein by this reference (collectively, the “**Improvements**”). That portion of the Improvements that are the responsibility of the Airport to design and construct, or caused to be designed and constructed (as identified on Exhibit B by an “x” under the columns identifying “*Seller*” as the “*Designing Party*,” the “*Constructing Party*,” “*Ownership*” and/or “*Maintenance*”), is sometimes hereinafter referred to collectively as the “**Airport Work**.” That portion of the Improvements that are the responsibility of Peak Innovation to design and construct, or cause to be designed and constructed (as identified on Exhibit B by an “x” under the columns identifying “*Buyer*” as the “*Designing Party*,” the “*Constructing Party*,” “*Ownership*” and/or “*Maintenance*”) is sometimes hereinafter referred to collectively as the “**Peak Innovation Work**.” Unless otherwise contemplated on Exhibit B and Exhibit B-1, the Airport Work relates only to off-site improvements required to be constructed to service the Property and other portions of the Project, and, unless otherwise expressly provided in this Agreement, all on-site improvements intended to be developed and constructed on the Property shall be at Peak Innovation’s sole cost and expense and are not a part of this Agreement. For purposes of this Agreement, all references in Exhibit B to “seller” shall mean the Airport, and all references therein to “buyer” shall mean Peak Innovation.

D. The Parties desire to enter into this Agreement in order to (i) set forth the terms and conditions under which the Airport will construct and perform, or cause to be constructed and performed, the Airport Work and Peak Innovation will construct and perform the Peak Innovation Work, and (ii) set forth certain other agreements between the Parties with respect to the Improvements.

## AGREEMENT:

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Capitalization; Incorporation of Recitals.** Any capitalized term used but not defined herein shall have the meaning given such term in the Purchase Agreement. The Recitals set forth above are true and correct and are hereby incorporated herein by this reference.

2. **Airport Responsibilities.**

2.1. **Generally.** The Airport shall, as part of the Costs (as hereinafter defined), be responsible for the design of the Airport Work, including the Costs for the coordination, administration, and oversight of the preparation and implementation of all associated applications, filings, submittals, further plans and specifications, budgets, timetables and other documents pertaining to the Airport Work. The Airport shall administer, coordinate and oversee the completion of the Airport Work in accordance with and subject to the terms and conditions of this Agreement. The Airport shall engage, or cause to be engaged, the designers and engineers who will be responsible for the construction of the Airport Work and the suppliers who will be responsible for supplying labor, materials, equipment, services and other work in connection with the construction of the Airport Work (each, a "**Service Provider**"). The Airport shall perform, or cause to be performed, the Airport Work as necessary to obtain acceptance of the Airport Work by the City of Colorado Springs and all other applicable governmental or quasi-governmental entities or agencies (the "**Approving Authorities**"). In performing its obligations under this Agreement, the Airport, as part of the Costs, shall comply with all terms and conditions of all applicable local, state, or federal statutes, ordinances, rules and regulations, and any amendments thereto, as well as those of any Approving Authorities (as hereinafter defined) having authority concerning the Airport Work.

2.2. **Airport not Approving Authorities.** Notwithstanding anything to the contrary contained in this Agreement, Peak Innovation acknowledges and understands that COS is acting by and through its enterprise, the Colorado Springs Municipal Airport and not in the capacity as the City of Colorado Springs which is the governing jurisdiction over the Project and the Property. As a result, Peak Innovation acknowledges and agrees that this Agreement does not obligate the City of Colorado Springs to approve all or any portion of the Airport Work or the Peak Innovation Work, or any related development applications or any other matter contemplated by this Agreement, submitted to the City of Colorado Springs or any Approving Authorities for approval, other than as any such approval is expressly required pursuant to the terms of this Agreement as part of the Airport's obligations under this Agreement. The Parties will be required to comply with the applicable City land use regulations, codes and rules governing the development of the Property.

2.3 **District Eligible Reimbursements.** (a) The Parties acknowledge that there are three metropolitan districts for the Project: Peak Metropolitan District No. 1 ("**District 1**"), Peak Metropolitan District No. 2 ("**District 2**") and Peak Metropolitan District No. 3 ("**District 3**") (collectively, the "**District**" or "**Peak Special Districts**"). The Property is within the service area of District 2 and District 3. The District was formed to undertake the obligation to finance, construct, operate, maintain and acquire public improvements to serve the Project, including without limitation, public sewer, water, streets, safety protection and park and recreation facilities

and services within the boundaries and service area of the District (the “**Public Infrastructure**”) and has authority to levy taxes, fees and assessments against the property within its boundaries and service area. The Parties further acknowledge and agree that the Airport shall be entitled to all reimbursements from the Peak Special Districts accruing and/or arising from the construction and installation of any and all Public Infrastructure in connection with the Improvements, no matter which Party constructs the same. Such reimbursement right, if it occurs, shall not release either Party from its respective obligations under this Agreement or the performance of either Party’s respective obligations or liabilities hereunder.

(b) The Parties acknowledge that one or more of the Peak Special Districts have issued bonded indebtedness to pay for the cost of the Public Infrastructure to serve the Project. To the extent either Party completes any Public Infrastructure pursuant to the terms of this Agreement, then, for purposes of obtaining the eligible reimbursements from the Peak Special Districts, Airport and Peak Innovation shall comply with the following: (1) comply with all applicable requirements for verification of costs and submittal of documentation required for evidencing and confirming costs associated with installation and construction of the Public Infrastructure, which may include, but are not limited to, construction plans and drawings, construction contracts, invoices, lien waivers and other evidence of payment from contractors, as-built drawings and acceptance letters from applicable governmental entities with respect to any such Public Infrastructure (collectively, the “**District Requirements**”); and (2) deliver to the Peak Special Districts all required certifications, documents and evidence of costs incurred to evidence compliance with the District Requirements; and (3) to the extent requested by the Peak Special Districts, by bill of sale in a form reasonably acceptable to the Peak Special Districts, convey, or cause the conveyance of, all completed Public Infrastructure for perpetual ownership, operation and maintenance and/or subsequent conveyance to another appropriate entity for perpetual ownership, operation and maintenance; and (4) cooperate with the Peak Special Districts in providing such documents as may be reasonably requested by the Peak Special District’s engineer and counsel to the Peak Special District in conjunction with verifying such costs in advance of the issuance of debt to finance the costs associated with construction and installation of the Public Infrastructure (collectively, (1)-(4) are the “**District Reimbursement Requirements**”). Peak Innovation acknowledges and agrees that it will satisfy all District Reimbursement Requirements in order to receive the eligible reimbursements from the Peak Special Districts for the Peak Innovation Work completed by Peak Innovation, and Peak Innovation hereby assigns, conveys and transfers to Airport any and all right, title and interest in and to such reimbursements. Peak Innovation further agrees that it shall do those things reasonably requested by the Airport that are necessary to cause such reimbursements to be paid to, or on behalf of, Airport.

(c) The Parties acknowledge and agree that the Airport intends to delegate to the District the design and construction of the Airport Work in accordance with the terms and conditions of an intergovernmental agreement entered into by and between the City, the Airport and District (the “**Airport /District IGA**”). The form of the Airport/District IGA and the terms and conditions contained therein have been mutually agreed to by the Airport and the District (the “**IGA Approved Form**”) but the IGA Approved Form remains expressly subject to final approval by the City Council for the City of Colorado Springs (the “**City Council**”). The Airport has delivered to Peak Innovation the IGA Approved Form and the Airport agrees to deliver to Peak Innovation the fully executed Airport/District IGA upon final approval of the Airport/District IGA by City Council and the District (the “**Final Approved IGA**”). As additional security for the Airport’s performance obligations under this Agreement, the Parties agree to execute and deliver that certain Availability of Funds and Step In Rights Agreement in the same form attached hereto as Exhibit G (the “**Set Aside Agreement**”) following delivery by the Airport of the Notice of

Approval in accordance with the terms and conditions of Section 6.1. The Set Aside Agreement, once executed by the Parties and the District (and approved or ratified as needed by the District), shall replace the Funds Escrow as additional security for the Airport's performance under this Agreement.

2.4 **Peak Innovation Plans.** The Parties acknowledge and agree that certain information relating to Peak Innovation's development of the Property is required for COS to complete the design, approvals, and construction of the Airport Work (the "**Peak Innovation Construction Plans**"). Peak Innovation shall deliver to the Airport within ten (10) days following request therefor all information that is then in Peak Innovation's possession with respect to the Peak Innovation Construction Plans that is reasonably necessary or prudent for the Airport to complete the Airport Work. Failure by Peak Innovation to timely deliver such information shall extend all applicable Airport completion dates set forth in the Construction Schedule (as defined in Section 5.1) on a day-for-day basis for each day that Peak Innovation fails to deliver the requested information, to the extent such delay by Peak Innovation delays the Airport with respect to the Airport Work.

## 2.5 **Easements.**

2.5.1 Peak Innovation acknowledges that the Airport, for itself, and on behalf of the Peak Special Districts and their respective agents, consultants, contractors and representatives (collectively, the "**Airport Parties**"), may require certain temporary easements and/or licenses providing access over, upon and across the Property in connection with the construction of the Airport Work (collectively, the "**Peak Innovation Easements**"). Peak Innovation agrees that it will grant and deliver to the Airport and the Airport Parties, as applicable, all Peak Innovation Easements, reasonably necessary for completion of the Airport Work and which do not materially interfere with the functionality, use, development, construction or security requirements of the Property as contemplated by the Peak Innovation Construction Plans. Peak Innovation shall provide the Airport and the Airport Parties the applicable Peak Innovation Easements complying with the provisions of this Section, which are to be prepared by the Airport within twenty (20) business days following receipt of written request therefor, which request shall be accompanied by a legal description and depiction of the easement area, on an easement or license form with such changes as agreed upon between Peak Innovation and the Airport. The applicable Airport completion dates in the Construction Schedule shall be automatically extended on a day-for-day basis for each day that Peak Innovation fails to timely deliver the Peak Innovation Easements (that comply with the requirements herein) after the twenty (20) business days period in the preceding sentence. The Airport shall pay for its own attorneys' fees and costs associated with the Peak Innovation Easements.

2.5.2 The Parties acknowledge that Peak Innovation will require temporary access rights and temporary construction license rights off-site of the Property, over and across the portions of the Project depicted on Schedule 1 (the "**Peak Innovation Access Rights**"), and that the Peak Innovation Access Rights are reasonably necessary for Peak Innovation to undertake the construction of the Improvements contemplated by the Peak Innovation Work. The Peak Innovation Access Rights will provide for access during all types of weather conditions, and will not materially interfere with the functionality or use of the Peak Innovation Park, the Airport operations, or any portion thereof, and which will not materially and adversely interfere with the security requirements for the Project. Concurrently with the execution of this Agreement, the Airport shall provide the Peak Innovation Access Rights on the Airport approved form attached hereto as Exhibit H (the "**Peak Innovation Access License Agreement**") at Peak Innovation's

sole cost and expense, which form shall be accompanied by the legal description and depiction of the access areas and includes indemnification and insurance requirements. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge that the Property is subject to the Colorado Springs Airport Filing No. 1F plat recorded on September 20, 2022, and recorded at Reception Number 222715016 in the Clerk and Recorder's Office of El Paso County, Colorado (the "**Final Plat**") that contains certain rights and reservations affecting the Property and the Project, and the Parties agree that all such rights and reservations identified on the Final Plat are hereby reserved without modification.

2.5.3 The Parties further acknowledge and agree that the Peak Innovation Access Rights are comprised of all-weather conditions permitted, temporary access via one or more access points, including without limitation, an access route off of (a) Integration Loop to/from Logistics Point, and/or (b) Embraer (the "**Temporary Access Roadways**"). Peak Innovation will initially have access to and from the Property via one of the Temporary Access Roadways. As part of the Construction Schedule (as defined below), the Airport will identify which Temporary Access Roadways will first be available, and provide Peak Innovation with an estimated schedule of when the Airport will need to switch between the two Temporary Access Roadways as the Airport Work requires. From and after the Effective Date, the Airport will provide Peak Innovation with at least ten (10) days prior notice of which Temporary Access Roadways will be available for Peak Innovation's use. Once the temporary access route from Embraer is established, Peak Innovation shall be responsible for the routine maintenance of such Embraer route at Peak Innovation's sole cost and expense until such time as Peak Innovation no longer exclusively uses the Embraer route as its main point of access. The routine maintenance of Integration Loop and Logistics Point during construction of the Airport Work shall be shared equally between the Airport and Peak Innovation until completion of Peak Innovation's Work and its receipt of a certificate of occupancy. Costs associated with repairing any damage to Integration Loop or Logistics Point caused by Peak Innovation or Peak Innovation's Service Providers shall be the responsibility of Peak Innovation.

2.5.4 In furtherance of Peak Innovation's development of the Property, Peak Innovation will require temporary access over and across portions of the southern boundary of Lot 5, Colorado Springs Airport Filing No. 1F ("**Lot 5**") not to exceed six (6) months (subject to delays caused by Uncontrollable Events (as defined below)) from the Airport's receipt of written notice from Peak Innovation of its need to access Lot 5 for temporary construction and staging purposes in conjunction with Peak Innovation's completion of a retaining wall(s) to be constructed within the Property (the "**Lot 5 Access**"). Peak Innovation agrees to commence the Lot 5 Access and retaining wall work no later than ninety (90) days from the Effective Date (subject to Uncontrollable Events), and to diligently pursue the completion of the retaining wall work. The Peak Innovation Access Rights will include the Lot 5 Access.

2.5.5 As set forth in Exhibit B, Peak Innovation has the obligation to design and to maintain the storm drainage swale and connection to the storm sewer stub on Lot 5 as required to complete the Peak Innovation Work (collectively, the "**Lot 5 Swale**"). As part of the Construction Schedule, the Airport will provide Peak Innovation with an estimated schedule of when the Airport will complete construction of the Lot 5 Swale. Notwithstanding anything to the contrary in Exhibit B, Peak Innovation's obligation to maintain the Lot 5 Swale will end and terminate upon the transfer of ownership by the Airport of Lot 5 to a third party, at which time the obligation for maintenance of the Lot 5 Swale will become the responsibility of the new legal owner of Lot 5. The Peak Innovation Access Rights will include any access Peak Innovation requires to maintain the Lot 5

Swale. The Lot 5 Access granted by the Airport shall be evidenced in the Peak Innovation Access License Agreement executed concurrently with this Agreement.

**2.6 Bonds and Assurances; Taxes, Fees and Permits.** Each Party shall be solely responsible for providing all Approving Authorities any bonds, warranties, performance guarantees, or other financial assurances that may be required by them with respect to the construction of each Party's respective Improvements contemplated by this Agreement. Each Party shall pay, as part of their respective Costs, all applicable sales, consumer, use, and other similar taxes pertaining to the construction of each Party's respective Improvements contemplated by the Airport Work and the Peak Innovation Work, and all royalties and license fees, and each Party shall secure and pay for all approvals, third party easements, assessments, charges, permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction and completion of the Improvements contemplated by the Airport Work and the Peak Innovation Work.

### **3. Peak Innovation Work Responsibilities.**

**3.1. Generally.** All work necessary to coordinate, administer and oversee the preparation and implementation of all applications, filings, submittals, further plans and specifications, budgets, timetables, and other documents pertaining to the construction and installation of (a) the Peak Innovation Work is the responsibility of Peak Innovation at Peak Innovation's sole cost and expense; and (b) the Airport Work is the responsibility of the Airport at the Airport's sole cost and expense. The Airport will not be responsible for the construction of the Peak Innovation Work and vice versa. Peak Innovation shall be responsible for performing or for the payment of Costs for the Peak Innovation Work. The Airport shall be solely responsible for performing and for the payment of Costs for the Airport Work. Any and all references herein to the Peak Innovation Work are simply to indicate work that Peak Innovation is required to complete. In no event do the Construction Schedule or the Final Budget apply to the Peak Innovation Work. Peak Innovation will obtain all necessary approvals of all Approving Authorities and the applicable parties under the Design Covenant (the "**Approving Parties**") with respect to the Peak Innovation Work. Peak Innovation shall cause the Peak Innovation Work to be constructed in accordance with all applicable laws, the deed restrictions, easements, reservations and covenants affecting the Property, and all applicable requirements of the Approving Authorities and Approving Parties. Peak Innovation shall defend, indemnify and hold the Airport harmless from and against any and all mechanic's liens that may be filed against the Project (exclusive of the Property owned by Peak Innovation) as a result of Peak Innovation's failure to pay its contractors, subcontractors or material men, including reasonable attorneys' fees, arising by reason of performance of any activities and obligations of Peak Innovation under this Agreement. In no event shall the City, the Airport, the Airport Parties, the Approving Parties or the Peak Special Districts be responsible for any design failure, construction defect, or slope stabilization failure in connection with the construction of the Improvements contemplated by the Peak Innovation Work, and any approval by the Airport, the Airport Parties, the City, the Approving Authorities, the Approving Parties or the Peak Special Districts shall not be interpreted to mean that the design, construction and installation of the Improvements contemplated by the Peak Innovation Work is free from defects, errors, omissions, is safe, or structurally sound.

### **4. Approved Plans for Improvements; Costs.**

**4.1. Plans and Specifications.** All plans and specifications for the construction of the Improvements shall have been or will be approved by the applicable Approving Authorities and

Approving Parties (“**Approved Plans**”) before a Party commences the construction of the Improvements contemplated by this Agreement. Each Party shall, at their respective cost and expense, cause such work required by it to be constructed to be completed in a good, workmanlike, and lien-free manner in accordance with the applicable terms and conditions of the Approved Plans, applicable laws, and all applicable requirements of the Approving Authorities (the “**Construction Standard**”). The preliminary plans for the Airport Work (the “**Preliminary Plans**”) are attached as **Exhibit C** and incorporated herein by this reference. The final plans for the Airport Work as approved by the Approving Authorities (collectively, the “**Final Plans**”) shall replace the Preliminary Plans, and the Airport shall attach the Final Plans to this Agreement as **Exhibit C** promptly following final approval thereof by the Approving Authorities.

4.2. **Definition of Costs.** As used in this Agreement, the term “**Costs**” shall mean the hard and soft costs incurred in connection with completion of the applicable Party’s completion of their respective work required by this Agreement, including, without limitation, the design (including all engineering expenses), construction and installation of the work, including, but not limited to, costs of labor, materials and suppliers, architectural, engineering, design and consultant fees and costs, blue printing services, construction staking, demolition, soil amendments or compaction, any processing, plan check or permit fees, legal and engineering services required to obtain a permit for and complete the applicable work, costs of insurance required by this Agreement, costs of any financial assurances, warranties, any corrections, changes or additions to work required by the Approving Authorities or necessitated by site conditions, state and county taxes imposed in connection with construction of the work, and any contingency funds.

4.3. **Final Budget; Costs for Modification of Plans.** Attached hereto as **Exhibit D** is a preliminary budget for the costs associated for the construction and completion of the Airport Work (the “**Preliminary Budget**”). Once the Final Plans are completed and approved, the Airport shall prepare a final budget (the “**Final Budget**”) for the Airport Work. The Airport will increase or decrease the Final Budget as needed to address and account for any change orders or new or updated bids for the Airport Work. This Agreement will be amended to incorporate the Final Budget and any further modifications thereto and the Airport will promptly deposit additional funds into the Funds Escrow (as defined below) or have the right to withdraw excess funds so that the amount of the Funds Escrow is the same as the Final Budget. Peak Innovation shall be responsible to pay when due all Costs with respect to the Peak Innovation Work. The Airport shall be responsible to pay when due all Costs with respect to the Airport Work and any cost overruns (“**Cost Overruns**”) incurred with respect to the Airport Work that are in excess of the Final Budget. However, if as a result of Peak Innovation’s or Peak Innovation’s agents, consultants, contractors and/or representatives’ action or inaction, the Peak Innovation Construction Plans are later modified resulting in a necessary or advisable change in all or any portion of the Airport Work, the payment of all Costs incurred by the Airport in implementing such changes in the Airport Work shall be the responsibility of Peak Innovation. Peak Innovation shall pay all such Costs which are Peak Innovation’s responsibility promptly following receipt of written demand therefor.

5. **Commencement and Completion Dates.** Subject to Uncontrollable Events, each Party agrees to cause construction of its respective work under this Agreement to be commenced and completed as follows:

5.1. **Commencement; Construction Schedule; Completion.** Attached hereto as **Exhibit E** is a construction schedule for the Improvements as mutually agreed to by the Parties (the “**Construction Schedule**”), identifying the commencement and completion dates for the

Airport Work and incorporating those certain milestone dates identified on **Exhibit F** attached hereto (the “**Milestone Dates**”) applicable to certain components of the Airport Work, which Milestone Dates identify the commencement and completion dates for certain material components of the Airport Work. The Airport shall cause Completion (as defined below) of the Airport Work on or before the deadlines therefor set forth in the Construction Schedule (the “**Completion Deadline**”), as may be extended for Uncontrollable Events. Notwithstanding any contrary provision of this Agreement, the Completion Deadline and the time for performance of the Airport’s obligations under the Construction Schedule shall be extended by a period of time equal to any period that progress in construction of the applicable work is delayed due to a strike, riot, act of war, act of violence, unusual delays of Approving Authorities, any delays caused by Colorado Springs Utilities (“**CSU**”) (despite the Airport using commercially reasonable efforts to require CSU to act in a timely fashion), any delays caused by Peak Innovation in timely delivering the Peak Innovation Construction Plans necessary for the Airport to complete the Airport Work and/or the Peak Innovation Easements (a “**Peak Innovation Delay**”), unseasonable or intemperate weather, act of God, labor and material shortages, or any similar act, occurrence or non-occurrence beyond such Party’s reasonable control (each, an “**Uncontrollable Event**”). The Party claiming an Uncontrollable Event must notify the other Party in writing within a reasonable time, but not later than fifteen (15) days of the notifying Party becoming aware of the actual circumstances of the Uncontrollable Event. The written notice of any Uncontrollable Event must contain a description of the circumstances causing the Uncontrollable Event and the length of the corresponding delay.

5.2. **Definition of Completion.** “**Completion**” of the Improvements shall be deemed to have occurred when all of the following have occurred with respect to each component of the Improvements:

5.2.1 The applicable constructing Party has delivered to the other a written certification signed by the constructing party stating that the applicable Improvements have been completed in accordance with the Construction Standard;

5.2.2 The applicable constructing Party has completed or corrected all items identified on the Approving Authority’s punch list to the satisfaction of the Approving Authority, if applicable;

5.2.3 The Improvements subject to Completion shall have been inspected and initially accepted by the applicable Approving Authority, if applicable; and

5.2.4 With respect to the Airport Work, Peak Innovation, together with the Airport and/or the Airport’s representatives, shall have inspected the Airport Work, and all punch list items identified by the Parties with respect to such work have been completed or corrected.

5.3. **Acceptance.** Each Party shall be responsible to obtain initial and final acceptance of all its respective work by the applicable Approving Authorities, and with respect to the Airport Work, pursuant to the Construction Schedule. Peak Innovation shall be responsible for any and all damage to the Airport Work caused by Peak Innovation or its agents which does not arise out of defective installation of the Airport Work. The Airport shall be responsible for any and all damage or defective work to the Airport Work or the Peak Innovation Work caused by the Airport or the Airport Parties which does not arise out of defective installation of the Peak Innovation Work.



5.4. **Liens.** (a) The Airport shall pay, or cause to be paid, when due, all liens and claims for labor and/or materials furnished to construct the Airport Work pursuant to this Agreement to prevent the filing or recording by any third party of any mechanics', materialmen's or other lien against the Property (collectively "**Liens**"). The Airport will, within fifteen (15) business days after the Airport otherwise becomes aware of such Liens, terminate the effect of any Liens by filing or recording an appropriate release or other bond. If Peak Innovation requests the Airport in writing to file and obtain any such release or other bond and the Airport fails to do so within fifteen (15) business days following receipt of such written request, Peak Innovation may obtain such bond on the Airport's behalf and the Airport shall promptly pay such amount to Peak Innovation. The Airport shall be fully responsible for any damages and costs, including, without limitation, court costs and reasonable attorneys' fees, incurred by Peak Innovation with respect to any Liens arising out of the Airport Work or by, through or under the Airport.

(b) Peak Innovation shall pay, or cause to be paid, when due, all liens and claims for labor and/or materials furnished to complete the Peak Innovation Work pursuant to this Agreement to prevent the filing or recording by any third party of any Lien against the Project. Peak Innovation will, within fifteen (15) business days after Peak Innovation otherwise becomes aware of such Liens, terminate the effect of any Liens by filing or recording an appropriate release or other bond. If the Airport requests Peak Innovation in writing to file and obtain any such release or other bond and Peak Innovation fails to do so within fifteen (15) business days following receipt of such written request, the Airport may obtain such bond on Peak Innovation's behalf and Peak Innovation shall promptly pay such amount to the Airport. Peak Innovation shall be fully responsible for any damages and costs, including, without limitation, court costs and reasonable attorneys' fees, incurred by the Airport with respect to any Liens arising out of the Peak Innovation Work, or by, through or under Peak Innovation.

## 6. **Airport Escrow; Self-Performance Remedy.**

6.1 **Airport Escrow.** (a) The Airport does not expect to obtain the City Council's approval on the Final Approved IGA and the Set Aside Agreement until after the Effective Date of this Agreement. As additional security and assurance of the Airport's construction obligations hereunder, on the date of closing of the Purchase, the Airport shall deposit, or shall cause to be deposited, with Land Title Guarantee Company (the "**Title Company**") a total amount equal to Four Million Three Hundred Twenty Four Thousand Nine Hundred Fifty Four and No/100 Dollars (\$4,324,954.00), which such amount is the estimated total Costs for that portion of the Airport Work to be completed through August 1, 2023 (the "**Initial Airport Funds**"). The Initial Airport Funds shall be held by the Title Company in a separate interest-bearing escrow account (the "**Funds Escrow**") and shall be maintained by the Title Company pursuant to an escrow agreement (the "**Escrow Agreement**") the form of which is set forth in **Exhibit I** attached hereto and incorporated herein by reference. The Initial Airport Funds shall be held by the Title Company in a separate interest-bearing escrow account (the "Funds Escrow") and shall be maintained by the Title Company pursuant to an escrow agreement (the "Escrow Agreement") the form of which is set forth in Exhibit I attached hereto and incorporated herein by reference. The Initial Airport Funds shall be maintained in the Funds Escrow until the Airport has received City Council's final approval of the Final Approved IGA and the Set Aside Agreement (the "**City Council Approval**") and the Airport has delivered written notice to the Title Company and Peak Innovation confirming receipt of City Council Approval (the "**Notice of Approval**"). Within ten (10) business days following the Airport's delivery of the Notice of Approval to Peak Innovation and the Title Company, the Airport shall deliver to the Title Company a counterpart original of the Set Aside Agreement executed by the Airport and the District and Peak Innovation shall deliver to

the Title Company a counterpart original of the Set Aside Agreement executed by Peak Innovation and the Airport (collectively the “**Set Aside Agreement Requirements**”), and immediately upon the satisfaction of the Set Aside Agreement Requirements, the Title Company shall distribute to the Airport the funds maintained in the Funds Escrow and shall terminate the Funds Escrow.

(b) Notwithstanding the provisions set forth in Section 6.1(a), if City Council Approval is not obtained by the Airport on or before August 1, 2023, the Initial Airport Funds shall remain maintained by the Title Company in the Funds Escrow in accordance with the terms of the Escrow Agreement and the Airport shall be required to make a second deposit of immediately available funds in the total amount of Nine Million Seven Hundred Fifty Thousand Seven Hundred Twenty Seven and No/100 Dollars (\$9,750,727.00), which such amount is the estimated Costs to Complete the remaining portion of the Airport Work (the “**Remaining Airport Funds**”). The Initial Airport Funds and the Remaining Airport Funds shall be maintained by the Title Company pursuant to the Escrow Agreement until the earlier of: (i) the final disbursement of the amounts in the Funds Escrow pursuant to the terms of the Escrow Agreement, or (ii) the date that is ten (10) business days following the Airport’s delivery of the Notice of Approval to the Title Company and Peak Innovation, and the satisfaction of the Set Aside Agreement Requirements. For so long as funds remain in the Funds Escrow and further provided Peak Innovation has not delivered an Assumption Notice pursuant to the terms of Section 6.2, the Airport may elect in its sole discretion to request disbursements from the Funds Escrow to fund Costs associated with the Airport Work in accordance with and subject to the disbursement procedures set forth in the Escrow Agreement. Only following Peak Innovation’s delivery of an Assumption Notice pursuant to the terms of Section 6.2 may Peak Innovation be permitted to request disbursements from the Funds Escrow in strict accordance with the terms and conditions of this Agreement and the Escrow Agreement.

6.2 **Notice of Breach.** If the Airport fails to cause construction of any component of the Airport Work to proceed or be completed pursuant to the Construction Schedule (as extended by any Uncontrollable Event), including failure to achieve any component by a Milestone Date (as extended by any Uncontrollable Event), then Peak Innovation may deliver written notice of the breach to the Airport (a “**Notice of Breach**”). The Notice of Breach shall specify in reasonable detail the basis for Peak Innovation’s determination and shall allow the Airport thirty (30) days after the Airport’s receipt of the Notice of Breach to cure any breach of the Airport’s obligations and responsibilities under this Agreement (the “**Cure Period**”); provided, however, if the nature of the breach is such that it cannot reasonably be cured within thirty (30) days, the Cure Period shall be deemed extended for a reasonable period of time not to exceed thirty (30) days (sixty (60) days in the aggregate) so long as the Airport has, prior to the end of the original Cure Period, (i) delivered written notice to Peak Innovation setting forth the Airport’s plan to remedy such breach, and (ii) commenced in good faith and with due diligence to cause such breach to be remedied. If the Airport does not cure (or cause the cure of) the breach within the Cure Period, then, Peak Innovation shall be entitled to assume and take over the construction of the Airport Work by providing written notice to the Airport of Peak Innovation’s election to assume the completion and construction of the Airport Work (the “**Assumption Notice**”), and the Airport hereby grants a temporary right of access over the Project as necessary for the purpose of completing such Airport Work.

6.3 **Assumption Right.** If Peak Innovation delivers an Assumption Notice, then the Airport shall cooperate to allow Peak Innovation to take over and complete the Airport Work in accordance with the Approved Plans, the Final Budget (as modified from time to time) and the Construction Standard, including the execution and delivery to Peak Innovation of such agreements, documents or instruments as may be reasonably necessary to assign to Peak

Innovation all contracts with third parties pertaining to the Airport Work. If at the time of Peak Innovation's delivery of the Assumption Notice the Airport has not obtained City Council Approval, Peak Innovation shall have the right to be reimbursed from the Funds Escrow for its actual out-of-pocket costs incurred in assuming and completing the construction of the Airport Work pursuant to the terms of this Agreement, provided that such costs are contemplated in the Final Budget and the request for reimbursement must be made in accordance with the disbursement procedures set forth in the Escrow Agreement. If at the time of Peak Innovation's delivery of the Assumption Notice the Airport has obtained City Council Approval and satisfied the Set Aside Agreement Requirements, and/or if at any time following delivery of the Assumption Notice the Airport obtains City Council Approval and satisfies the Set Aside Agreement Requirements, in lieu of disbursements from the Funds Escrow, and subject to Peak Innovation satisfying the terms and conditions set forth in in the Set Aside Agreement, Peak Innovation's sole reimbursement rights shall be pursuant the terms of the Set Aside Agreement for certain verified actual out-of-pocket third party Costs incurred by Peak Innovation in assuming and completing the construction of the Airport Work pursuant to this paragraph (provided such Costs are contemplated in the Final Budget and reimbursable pursuant to the terms of the Set Aside Agreement); further provided, however, to the extent Peak Innovation is not reimbursed in full under the Set Aside Agreement for its verified actual out-of-pocket third party Costs incurred by Peak Innovation in exercising its rights hereinabove (the "**Non-Reimbursed Costs**"), Peak Innovation shall have the right to be reimbursed from the Airport for (i) those Non-Reimbursed Costs that are contemplated by the Final Budget and are not recouped under the Set Aside Agreement from the District, and (ii) those Non-Reimbursed Costs that were not contemplated by the Final Budget but were otherwise reasonably incurred by Peak Innovation in connection with the performance of the Airport Work in conformance with the Approved Plans in an amount not to exceed Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) within forty-five (45) days following written demand therefor (which such written demand shall include reasonable verifiable evidence of the actual out-of-pocket third party Costs subject to reimbursement). The Airport hereby grants to Peak Innovation a temporary right of access over portion of the Project reasonably necessary for purposes of completing the Airport Work pursuant to this paragraph.

**6.4 Airport Self-Help Right.** If Peak Innovation fails to cause construction of any component of the Peak Innovation Work that is to be located offsite of the Property pursuant to the terms of this Agreement, then Airport may deliver to Peak Innovation a Notice of Breach. If Peak Innovation does not cure (or cause the cure of) the breach within the Cure Period, then, the Airport shall be entitled to assume and take over the construction of the Peak Innovation Work subject to the Notice of Breach by providing Airport with an Assumption Notice; provided, however, if the nature of the breach is such that it cannot reasonably be cured within thirty (30) days, the Cure Period shall be deemed extended for a reasonable period of time not to exceed thirty (30) days (sixty (60) days in the aggregate) so long as Peak Innovation has, prior to the end of the original Cure Period, (i) delivered written notice to the Airport setting forth the Airport's plan to remedy such breach, and (ii) commenced in good faith and with due diligence to cause such breach to be remedied. If the Airport delivers an Assumption Notice, then (i) Peak Innovation shall cooperate to allow the Airport to take over and complete the respective Peak Innovation Work including the execution and delivery to the Airport of such agreements, documents or instruments as may be reasonably necessary to assign to the Airport all contracts with third parties pertaining to the applicable Peak Innovation Work, and (ii) Airport shall have the right to be reimbursed from Peak Innovation for its actual out-of-pocket costs incurred in exercising its rights herein promptly following written demand therefor.

7. **Mediation of Disputes.** If any Party believes that a dispute, unresolved question or controversy arising under or in connection with this Agreement exists (a “**Dispute**”), it may notify the other Parties thereof, which notice (a “**Dispute Notice**”) shall identify the Dispute, and the following process shall be followed: (i) the Parties shall hold a meeting within thirty (30) calendar days from the date of Dispute Notice, attended by persons with decision-making authority regarding the Dispute, and attempt, in good faith, to negotiate a resolution of the Dispute; (ii) if, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of any Dispute, then the Parties shall submit the Dispute to non-binding mediation and to bear equally the costs of the mediation; and (iii) the Parties agree to participate in good faith in the mediation, negotiation, and attempted resolution of all Disputes. The Parties will jointly appoint a mutually acceptable mediator. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the Dispute through mediation, then the parties shall be free to litigate the unresolved matter. Except as otherwise provided in this Agreement, Each Party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each Party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement, including attorney’s fees. The Parties agree that time is of the essence with respect to the resolution of any Disputes arising hereunder.

8. **Party Representatives, Progress Meetings and Certain District Matters.**

8.1 **Representatives.** Each Party designates the respective individual named below as its representative to act on its behalf in all matters covered by this Agreement. All inquiries, requests, instructions, authorizations, and other communications with respect to the matters covered by this Agreement shall be made to such representatives. Any Party may without further or independent inquiry, assume and rely at all times that the other Party’s representative designated hereunder has the power and authority to make decisions on behalf of such Party, to communicate such decisions to the other Party and to bind such Party by his acts and deeds, unless otherwise notified in writing by the Party designating the representative. Any Party may change its representative under this Agreement at any time by written notice to the other Party. The initial representative of each Party for the purpose of this paragraph shall be as follows:

Peak Innovation: Mike Orr

The Airport: Troy Stover, Garrett Baum and Bill Branyan

8.2 **Meetings.** From and after the date of this Agreement and until Completion of the Improvements, the designated representatives of the Parties shall meet within five (5) days following a request from a Party regarding the status of construction of the Improvements, scheduling and coordination issues, engineering and design issues, and other similar issues.

9. **Notices and Communications.** All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, and delivered personally by e-mail transmission with a return/read receipt, or sent by nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS) for next-day or next-business-day delivery, to the address of the intended recipient at its address as set forth below, or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner.

To Peak Innovation: Peak Innovation, LLC  
1125 17th Street, Suite 800  
Denver, Colorado 80202  
Attn: Mike Orr  
Email: [morr@suncappg.com](mailto:morr@suncappg.com)  
Telephone: (303) 880-3810

And

Peak Innovation, LLC  
6106 Carnegie Boulevard, Suite 180  
Charlotte, North Carolina 28209  
Attn: Jason Bria, Esq.  
Email: [jbria@suncappg.com](mailto:jbria@suncappg.com)

with copy to:

Otten Johnson Robinson Neff & Ragonetti PC  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attn: Jed Sonnenshein  
Email: [jsonnenshein@ottenjohnson.com](mailto:jsonnenshein@ottenjohnson.com)  
Telephone: (303) 575-7568

To COS :

City of Colorado Springs  
Peak Innovation Park Development Department  
30 S. Nevada Ave., Suite 604  
Colorado Springs, Colorado 80903  
Attn: Troy Stover, Business Park Development Director  
E-mail: [Troy.Stover@coloradodprings.gov](mailto:Troy.Stover@coloradodprings.gov)

With a copy to:

Urban Frontier RMMA, LLC  
1515 Market Street, Suite 200  
Denver, CO 80202  
Attn: Garrett Baum  
E-mail: [gbaum@urbanfrontier.com](mailto:gbaum@urbanfrontier.com)

Office of the City Attorney  
30 South Nevada Avenue, Suite 501  
Colorado Springs, Colorado 80901  
Attn: David Andrews  
E-mail: [David.Andrews@coloradosprings.gov](mailto:David.Andrews@coloradosprings.gov)

MDH Law Group, LLC  
1001 Bannock Street, Suite 135  
Denver, Colorado 80204  
Attn: Michelle Z. McDonald  
E-mail: [mmcdonald@mdhlawgroup.com](mailto:mmcdonald@mdhlawgroup.com)

Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, upon return of a return/read receipt of e-mail transmission during normal business hours, excluding City or federal holidays (Monday through Friday, 8:30 a.m.– 5:00 p.m.)

Colorado time), or on the next business day following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above.

10. **Further Acts.** Each Party shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Further, the Parties shall reasonably cooperate with each other as is reasonably necessary to complete each Party's construction obligations hereunder.

11. **No Partnership; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties hereto. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No change or addition is to be made to this Agreement except by written amendment executed by the Parties hereto. This Agreement shall not be construed more strictly against one Party than the other merely by virtue of the fact that it may have been initially drafted by one of the Parties or their counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party(ies), shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default. In the event of a conflict between the terms of this Agreement and those of the Purchase Agreement, the terms of this Agreement shall govern and be controlling.

13. **Governing Law and Venue.** This Agreement is subject to and shall be interpreted under, and performed under, the laws of the State of Colorado, the City Charter, City Code, City Ordinances, and the rules and regulations of the Airport and the City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

14. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, RULES, AND REGULATIONS, EACH OF COS AND PEAK INNOVATION WAIVES ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN COS AND PEAK INNOVATION ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR CONTRACT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

15. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

16. **Successors and Assigns.** This Agreement shall be binding upon and to the benefit of the Parties and their respective successors and assigns. With the exception of Airport's delegation of the Airport Work to the Peak Special Districts, if applicable, no Party may assign, encumber or pledge its interest in this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and any attempted assignment, encumbrance or pledge in violation of this provision shall be null and void and of no force or effect.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

18. **Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

19. **Computation of Periods.** All time periods referred to in this Agreement shall include all Saturdays, Sundays and City and federal holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or City or federal holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a City or federal holiday.

20. **Headings, Exhibits and Recitals.** Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement. The Recitals to this Agreement and all Exhibits referenced herein are a part of this Agreement.

21. **Rules of Construction.** All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, and thus, this Agreement shall not be construed against the maker thereof.

22. **No Recording.** Neither this Agreement nor any memorandum hereof shall be recorded in the real estate records of the county in which the Property is located. Any such recording shall be void and shall constitute a material default hereunder by the Party that causes such recordation.

23. **No Waiver.** Neither the failure of either Party to exercise any power given such Party herein or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

24. **Confidentiality.** COS agrees that it shall not, without the prior written consent of Peak Innovation, and except as expressly set forth below or otherwise required by law including, without limitation, the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., (in which case (i) COS shall promptly notify Peak Innovation of the same to allow Peak Innovation to contest any such law, so long as COS is not at risk of violating such law and (ii) Peak Innovation shall be responsible for all legal expenses associated with contesting the law and shall reimburse COS for all attorney's fees awarded against COS in accordance with C.R.S. § 24-72-201, et seq. COS and

Peak Innovation shall not transmit any of the information contained in this Agreement or any document obtained by COS or Peak Innovation in connection with this Agreement to any third party, except on a need to know basis. The covenants set forth in this paragraph shall survive the completion or termination of this Agreement but shall be subject to the limitations contained in this paragraph.

25. **Appropriation.** 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 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.

26. **No Waiver of Immunity.** COS specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as now written or hereafter amended.

27. **Nondiscrimination.**

(i) Peak Innovation acknowledges that the Airport 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 the Airport receives federal financial assistance.

(ii) As used below, the term “contractor” shall mean Peak Innovation, the term “sponsor” shall mean the Airport, and the term “contract” shall mean this Agreement.

(iii) 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:

- (1) **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.
- (2) **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 leases 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.

- (3) **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 leases 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.
- (4) **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.
- (5) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this Agreement, the sponsor will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - (a) Withholding payments to the contractor under the contract until the contractor complies; and/or
  - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases 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.

(iv) Peak Innovation, 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) In the event facilities are constructed, maintained, or otherwise operated on the property described in this 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, Peak Innovation 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.

(v) Peak Innovation, 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 Peak Innovation will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

(vi) **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:

- (1) 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.
- (2) 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);
- (3) 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);
- (4) 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;
- (5) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (6) 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);

- (7) 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);
- (8) 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;
- (9) 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);
- (10) 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;
- (11) 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).  
;
- (12) 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.*).

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

(viii) 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:

- (1) Furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof; and
- (2) 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.

28. **Notice and Cure.** In the event of any breach or default under Section 27 hereunder by Peak Innovation or one of its contractors, Peak Innovation (or its contractor) shall have a period of thirty (30) days from receipt of written notice from Airport of such default or breach to cure such default or breach. If Peak Innovation (or its contractor) cannot cure such default or breach within such thirty (30)-day period, then Peak Innovation (or its contractor) shall have up to sixty (60) days total from receipt of the written notice of default to cure any such default or breach provided Peak Innovation (or its contractor) is using commercially reasonable efforts to do so.

[Signatures on following page]


**IN WITNESS WHEREOF**, Peak Innovation and the Airport have executed this Agreement as of the date first set forth above.

**PEAK INNOVATION:**

**PEAK INNOVATION, LLC,**  
a Delaware limited liability company

By: Peak Innovation Investments, LLC,  
a Delaware limited liability company

Its: Manager

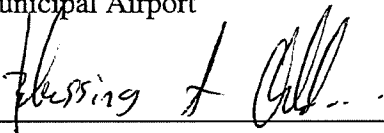
By:   
Jason K. Bria

Its: Authorized Signatory

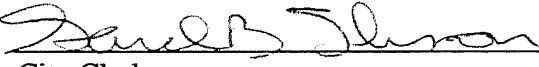
**AIRPORT:**

**CITY OF COLORADO SPRINGS, COLORADO,**

a home rule city and Colorado municipal corporation, by and through its enterprise, the Colorado Springs Municipal Airport

By:   
Yemi Mobolade

Title: Mayor

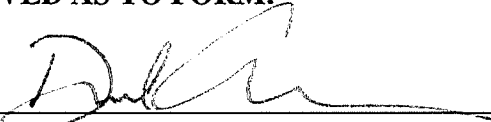
Attest   
City Clerk



By:   
Troy Stover

Title: Business Park Development Director

**APPROVED AS TO FORM:**

By:   
David Andrews, Office of the City Attorney

## **Exhibit A**

### **Legal Description of Property**

Lot 6, Colorado Springs Airport Filing No. 1F plat recorded on September 20, 2022, and recorded at Reception Number 222715016 in the Clerk and Recorder's Office of El Paso County, Colorado.

**Exhibit B**  
**(Work Matrix-Improvements)**

**See attached.**



# EXHIBIT B

Peak Innovation Park - Filing No. 1F, Lot 6

as of 04/12/23

Development Responsibilities (Design, Approvals, Permitting, Construction, Funding, Ownership & Maintenance)  
REV 04/11/23

Task	Exhibit Reference	DESIGNING PARTY			CONSTRUCTING PARTY			OWNERSHIP				MAINTENANCE		
		Buyer	Seller	Others	Buyer	Seller	Others	Buyer	Seller	CSU	Others	Buyer	Seller	Others
		<b>Grading</b>												
Temporary Access Road to Lots 5 & 6	G-1		X			X			X				X (9)	X (9)
Grading within Lot 6 for Construction of Roadways	G-1		X			X		X					X (2)	
Grading within Lot 6 for Construction of Adjacent Utilities	G-1		X			X		X					X (2)	
Grading within Lot 6	G-2	X			X			X					X	
<b>Public Roadways, Parking, Drives (3)</b>														
Construction of Integration Loop and Logistics Point	R-1		X			X			X				X	
Driveway Aprons from Integration Loop to Lot 6	R-1		X			X			X				X	
Asphalt/Concrete Drives from Integration Loop into and within Lot 6	R-1	X			X			X					X	
<b>Potable Water</b>														
Potable Water Line within Integration Loop and Logistics Point	W-1		X			X			X					X
Potable Water Lateral(s) to Lot 6 Property Line	W-1		X			X			X					X
Water Lines within Lot 6 and Laterals to Buildings	W-1	X			X				X (4)				X (4)	X (4)
<b>Sanitary Sewer</b>														
Sanitary Sewer Line to Lot 6 Boundary	SS-1		X			X			X					X
Sanitary Sewer Package Lift Station within Lot 6	SS-1		X			X			X					X
Sanitary Sewer Line within Lot 6	SS-1	X			X				X (5)				X (5)	X (5)
<b>Storm Drainage</b>														
Storm Drainage System within Lot 6	SD-1	X			X				X				X	
Storm Drainage Line from Lot 6 to Detention Pond	SD-1		X			X			X				X	
Storm Drainage Swale and Connection to Storm Stub in Lot 5	SD-1	X				X			X				X	
Offsite Storm Drainage Pond and Outlet Improvements	SD-1		X			X			X				X	
<b>Dry Utilities</b>														
Provisions for Electrical Service to Lot 6 (6)	DU-1		X (6)			X (6)							X (6)	X (6)
Electrical Distribution within Lot 6	DU-1		X (6)		X (6)		X (6)						X (6)	X (6)
Provisions for Natural Gas Service to Lot 6 Property Line (7)	DU-1		X (7)			X (7)							X (7)	X (7)
Natural Gas Distribution within Lot 6	DU-1		X (7)			X (7)							X (7)	X (7)
Provisions for Telecommunications Service to Lot 6 Property Line (8)	DU-1		X (8)			X (8)		X (8)					X (8)	X (8)
Telecommunications Distribution within Lot 6	DU-1		X (8)			X (8)							X (8)	X (8)
<b>Landscape/Irrigation/Sidewalk</b>														
Landscape & Irrigation within Lot 6 to back of Sidewalk along Roadways and to Property Line	LS-1	X			X			X					X	
Landscape & Irrigation along Peak Innovation Pky and East West Road between Curb and Sidewalk (to be Phased)	LS-1		X			X			X				X	

**GENERAL NOTES**

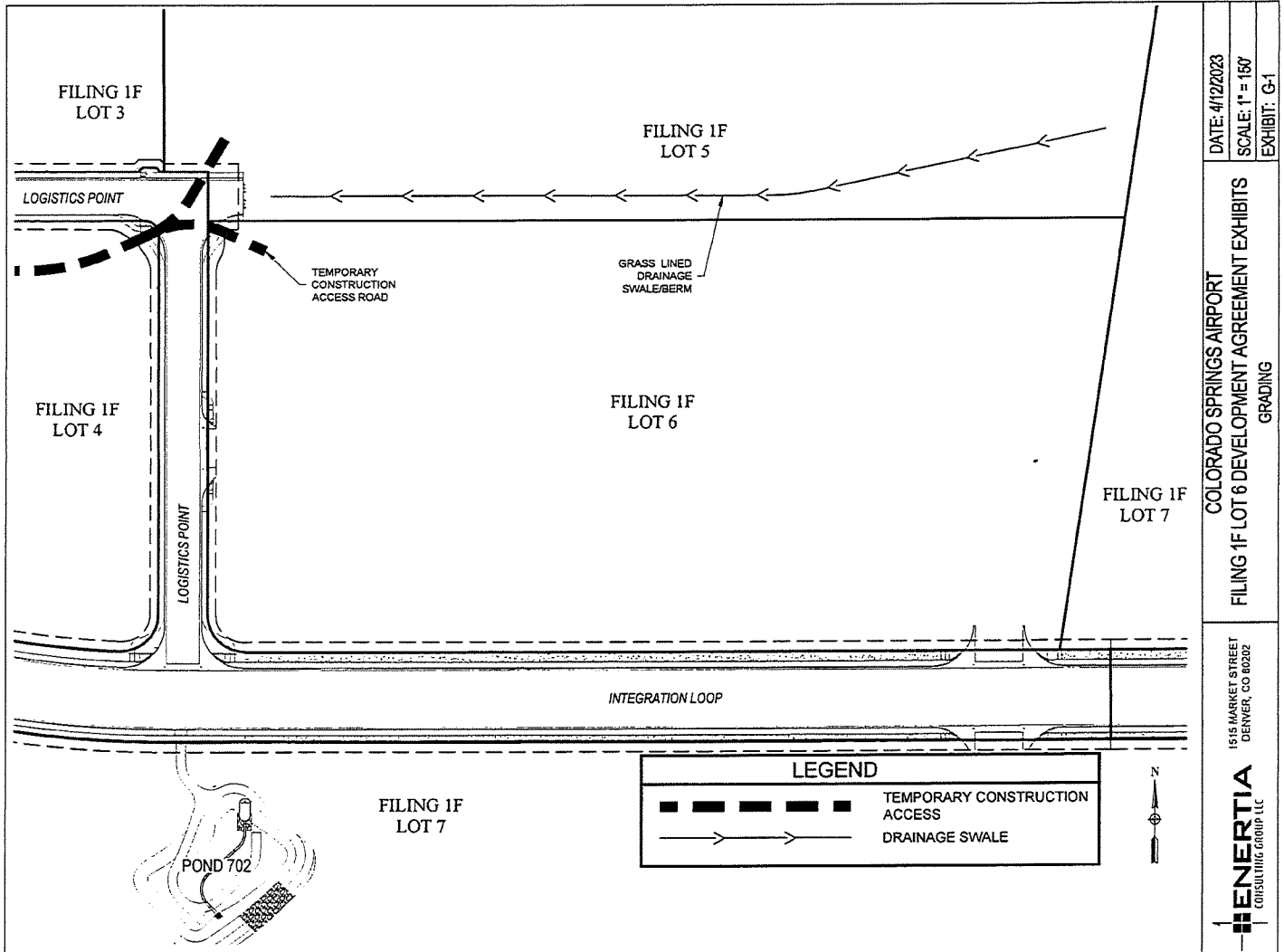
1. Seller may transfer obligations under this matrix to Peak Metropolitan District No. 3
2. Maintenance thru Completion of Construction Only.
3. Roadway improvements to include overexcavation, base material, asphalt, curb and gutter, edge drains, sidewalks, street lights and regulatory signage & striping.
4. Water mains owned and maintained by Colorado Springs Utilities (CSU) subject to Buyer's Subdivision Improvement Agreement. Laterals to buildings to be owned and maintained by Buyer.
5. Sewer lines owned and maintained by Colorado Springs Utilities (CSU) subject to Buyer's Subdivision Improvement Agreement. Laterals to buildings to be owned and maintained by Buyer.
6. Colorado Springs Utilities (CSU) will Design, Construct, Own & Maintain all Electrical Improvements to the Building Meter(s). "Provisions" includes Sleeving, Easements, etc. outside of Lot 3 for Utility Company to provide service(s) to Lot 6.
7. Colorado Springs Utilities (CSU) will Design, Construct, Own & Maintain all Natural Gas Improvements to the Building Meter(s). "Provisions" includes Sleeving, Easements, etc. outside of Lot 3 for Utility Company to provide service(s) to Lot 6.
8. Telecommunications System providers will Design, Construct, Own & Maintain all Telecommunications Improvements to the Building(s). "Provisions" includes Sleeving, Easements, etc. outside of Lot 6 for Utility Company to provide service(s) to Lot 6.
9. Maintenance obligation for Temporary Access Road shall be by Buyer to the extent Buyer is the sole user. In the event the Temporary Access Road is shared by others, the maintenance responsibility will be shared accordingly.

**EXHIBIT B-1**

**(Depiction-Improvements)**

**See attached.**

EXHIBIT B-1



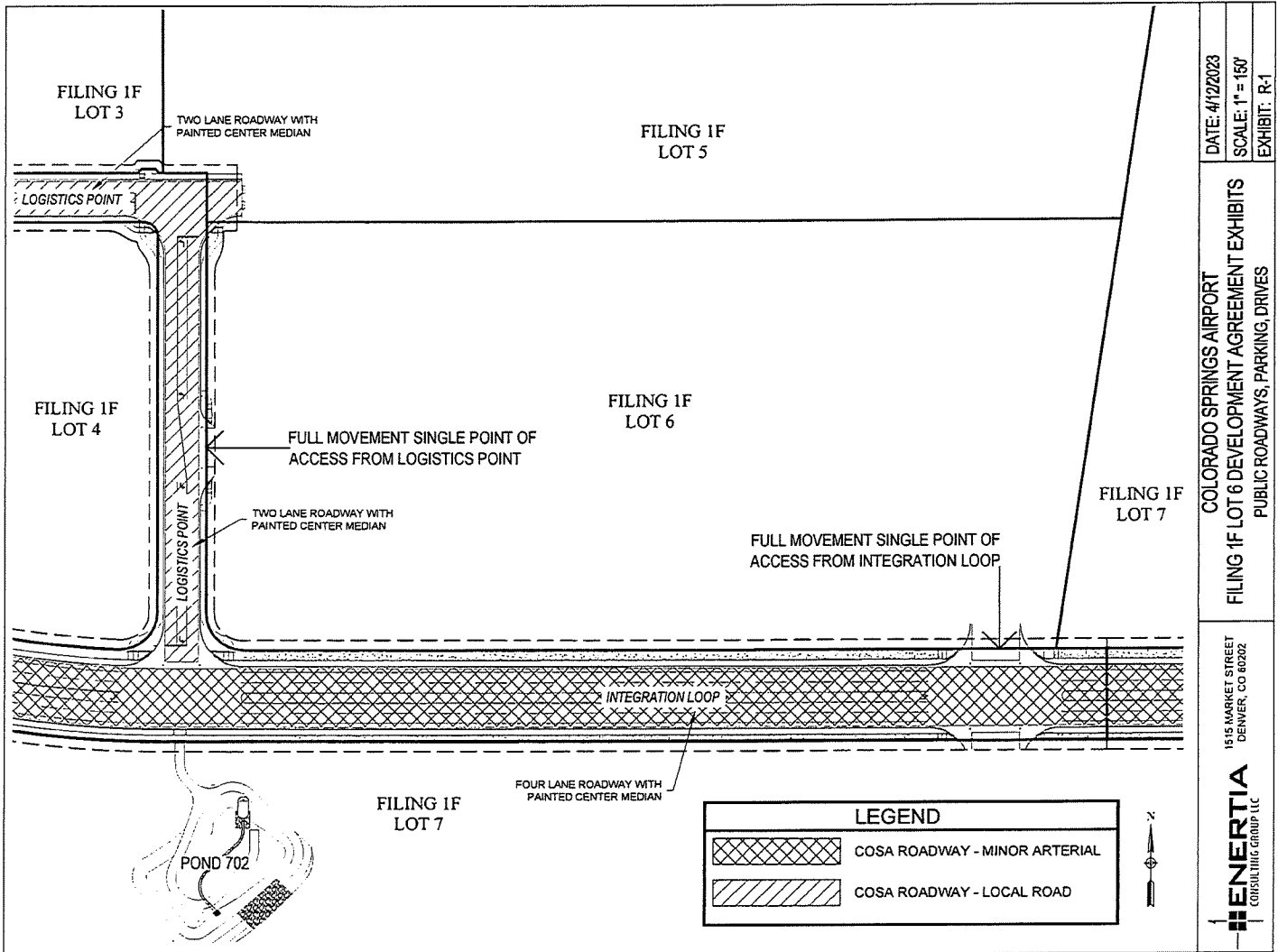
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 SCALE: 1" = 150'  
 EXHIBIT: G-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 GRADING

1515 MARKET STREET  
 DENVER, CO 80202



EXHIBIT B-1



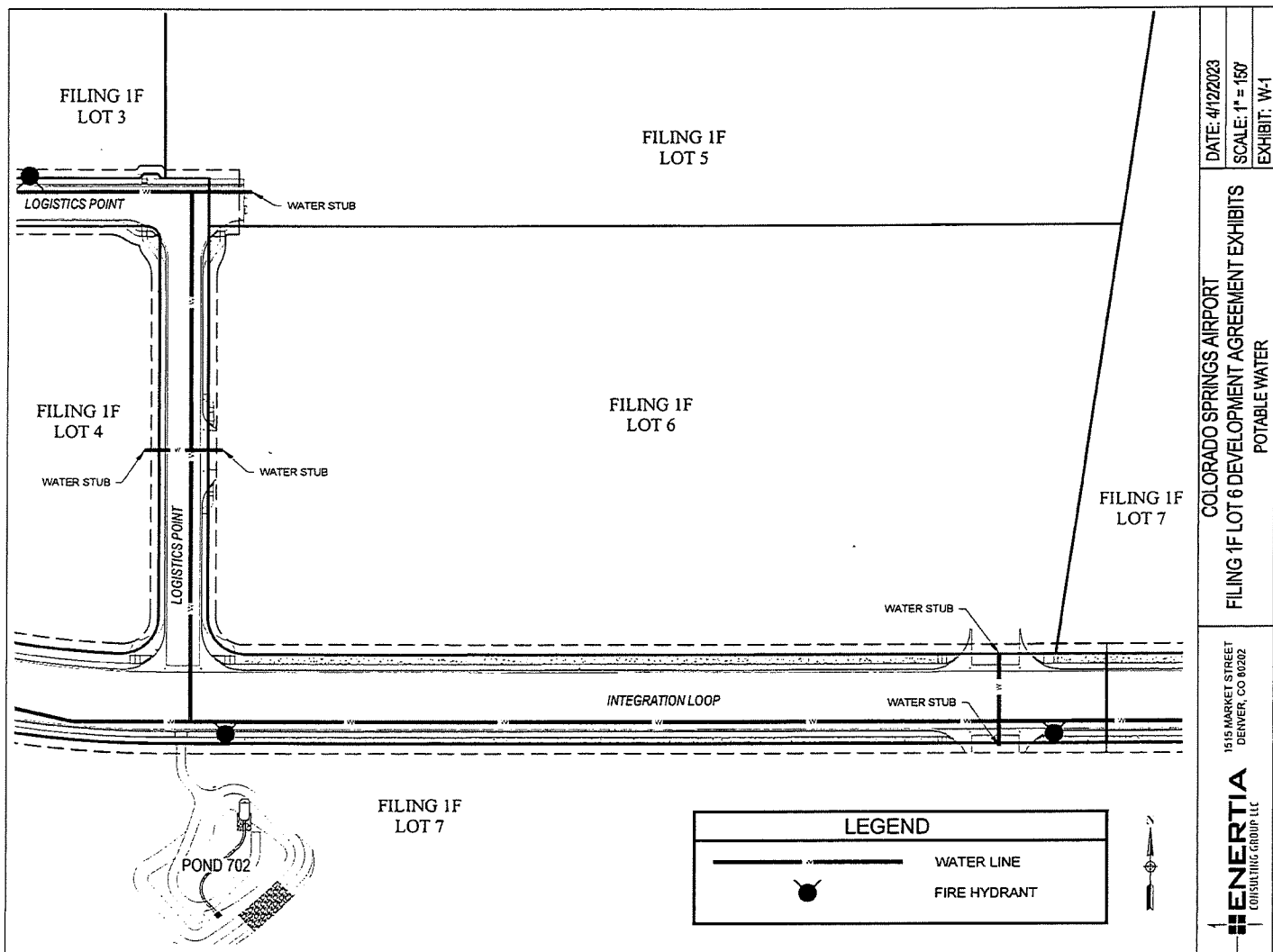
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 SCALE: 1" = 150'  
 EXHIBIT: R-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 PUBLIC ROADWAYS, PARKING, DRIVES

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

EXHIBIT B-1



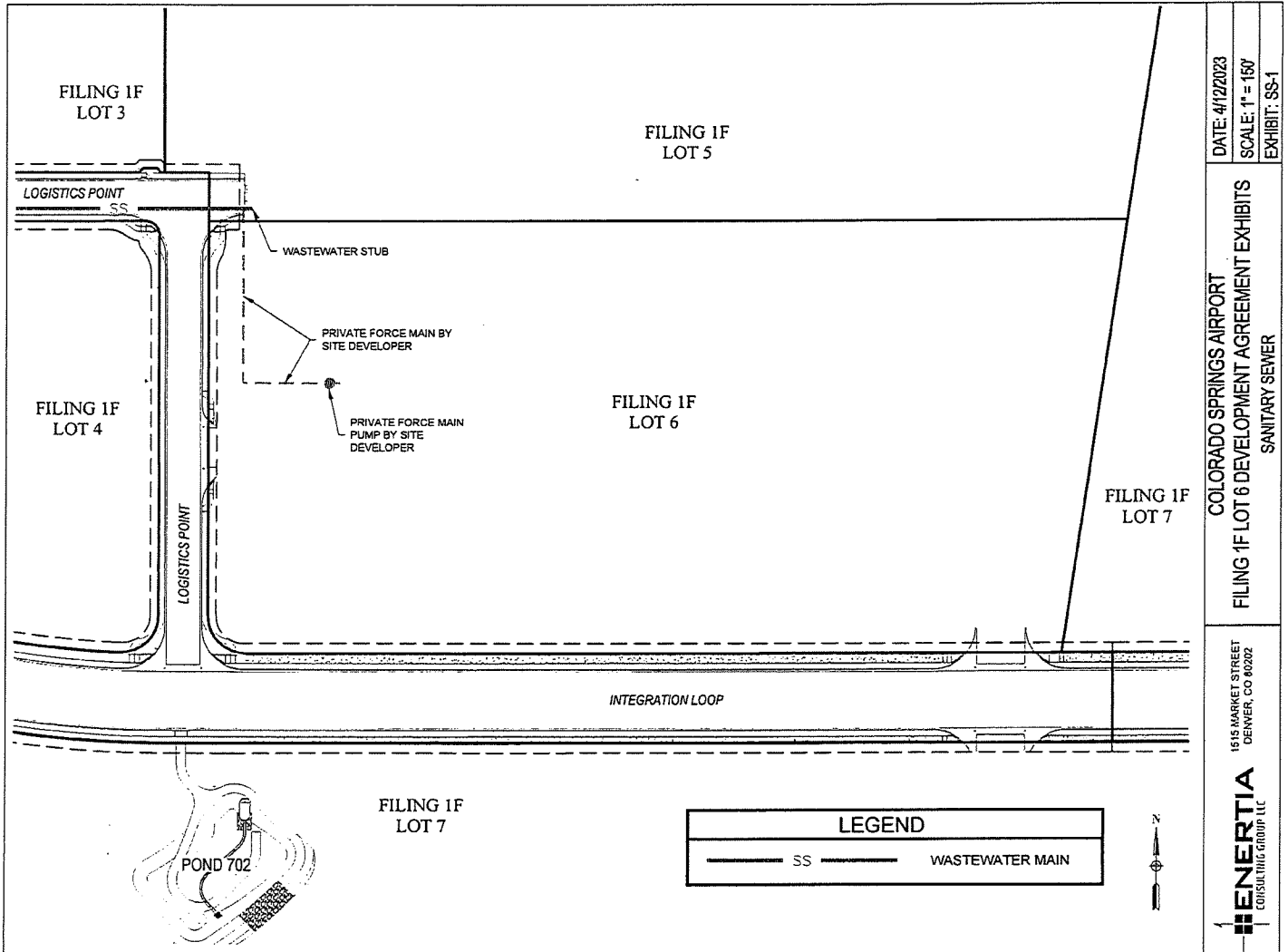
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 EXHIBIT: W-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 POTABLE WATER

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

EXHIBIT B-1



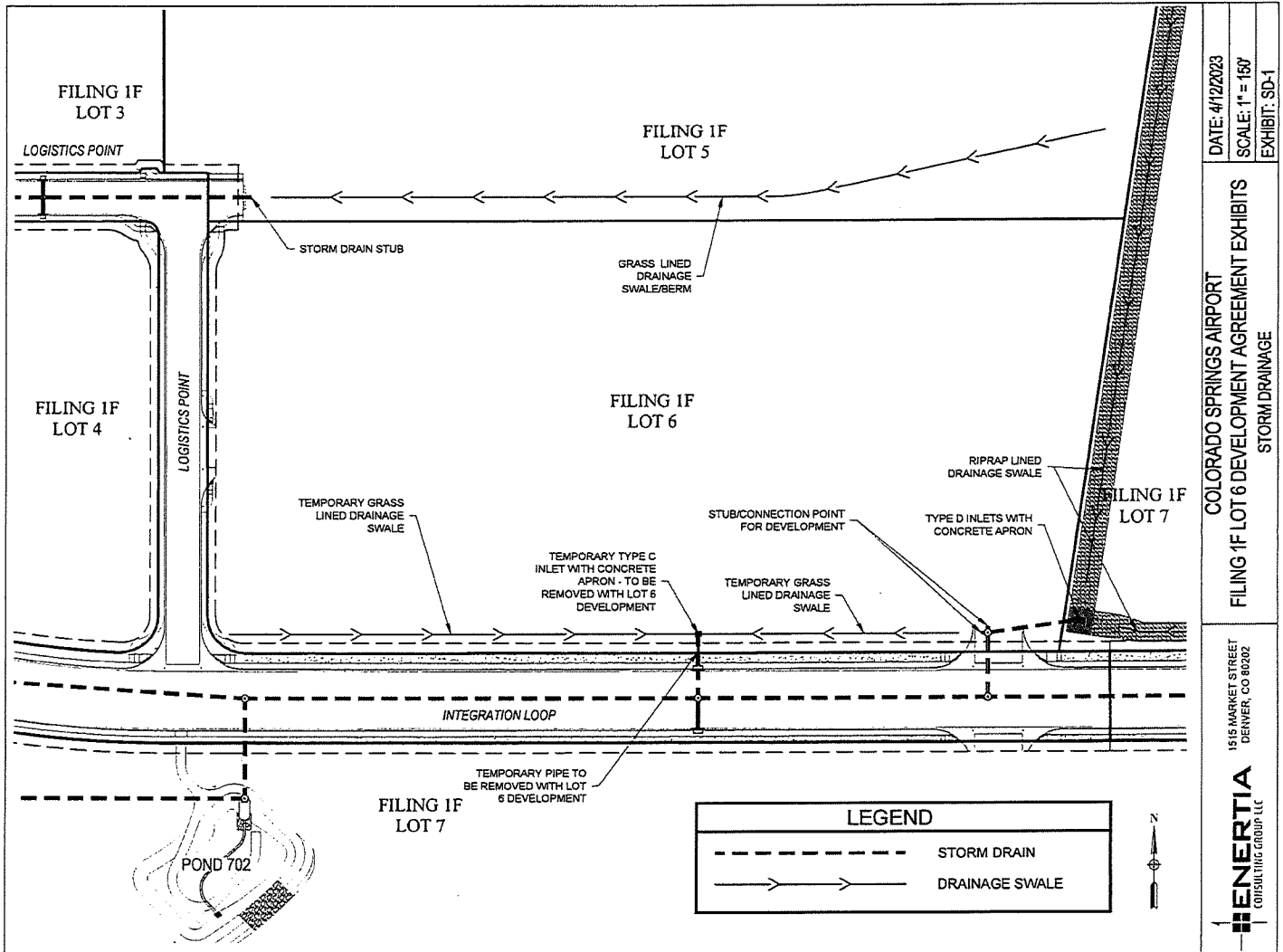
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SCALE: 1" = 150'  
EXHIBIT: SS-1

COLORADO SPRINGS AIRPORT  
FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
SANITARY SEWER

1515 MARKET STREET  
DENVER, CO 80202

**ENERTIA**  
CONSULTING GROUP, LLC

EXHIBIT B-1

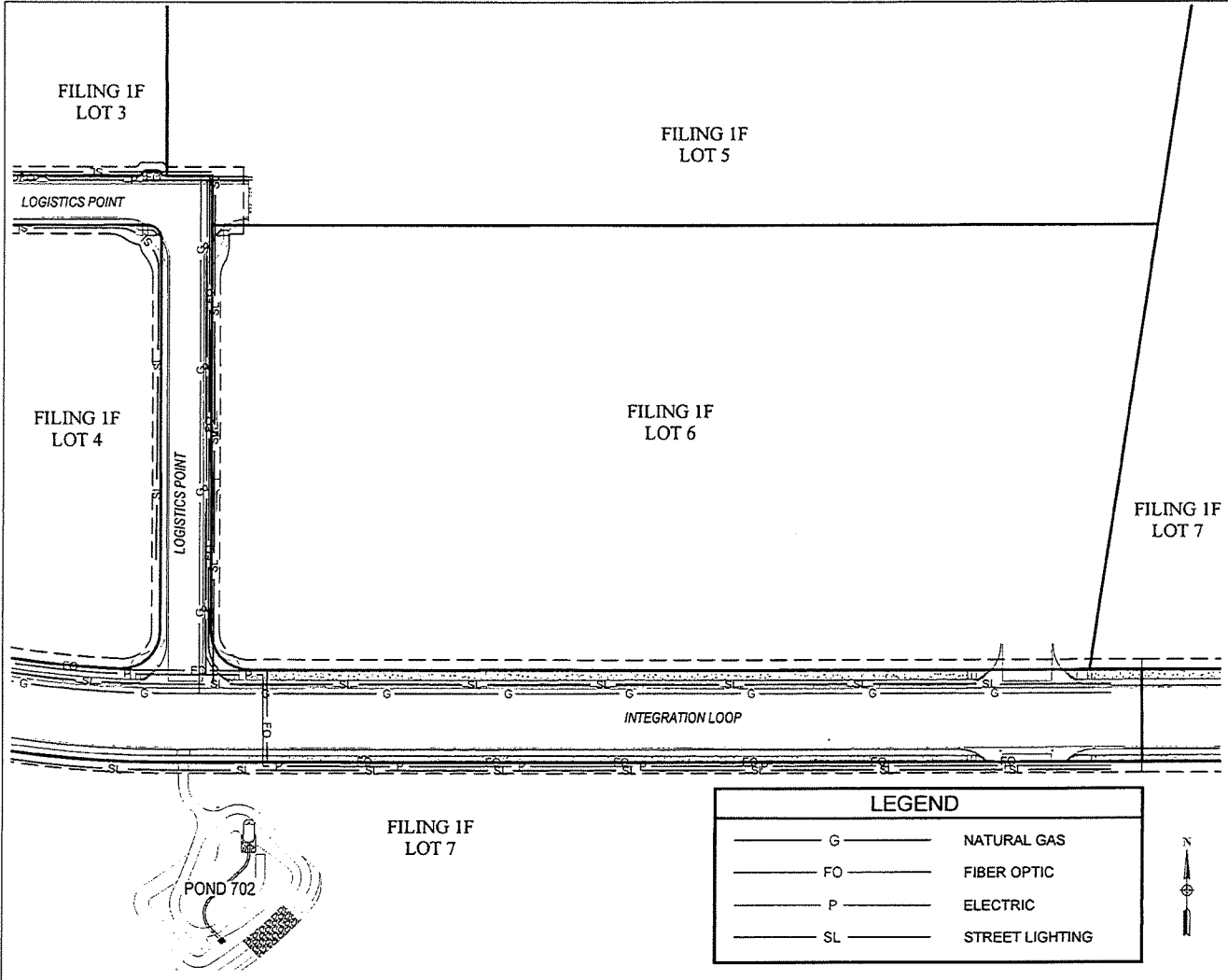


DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: SD-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 STORM DRAINAGE

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

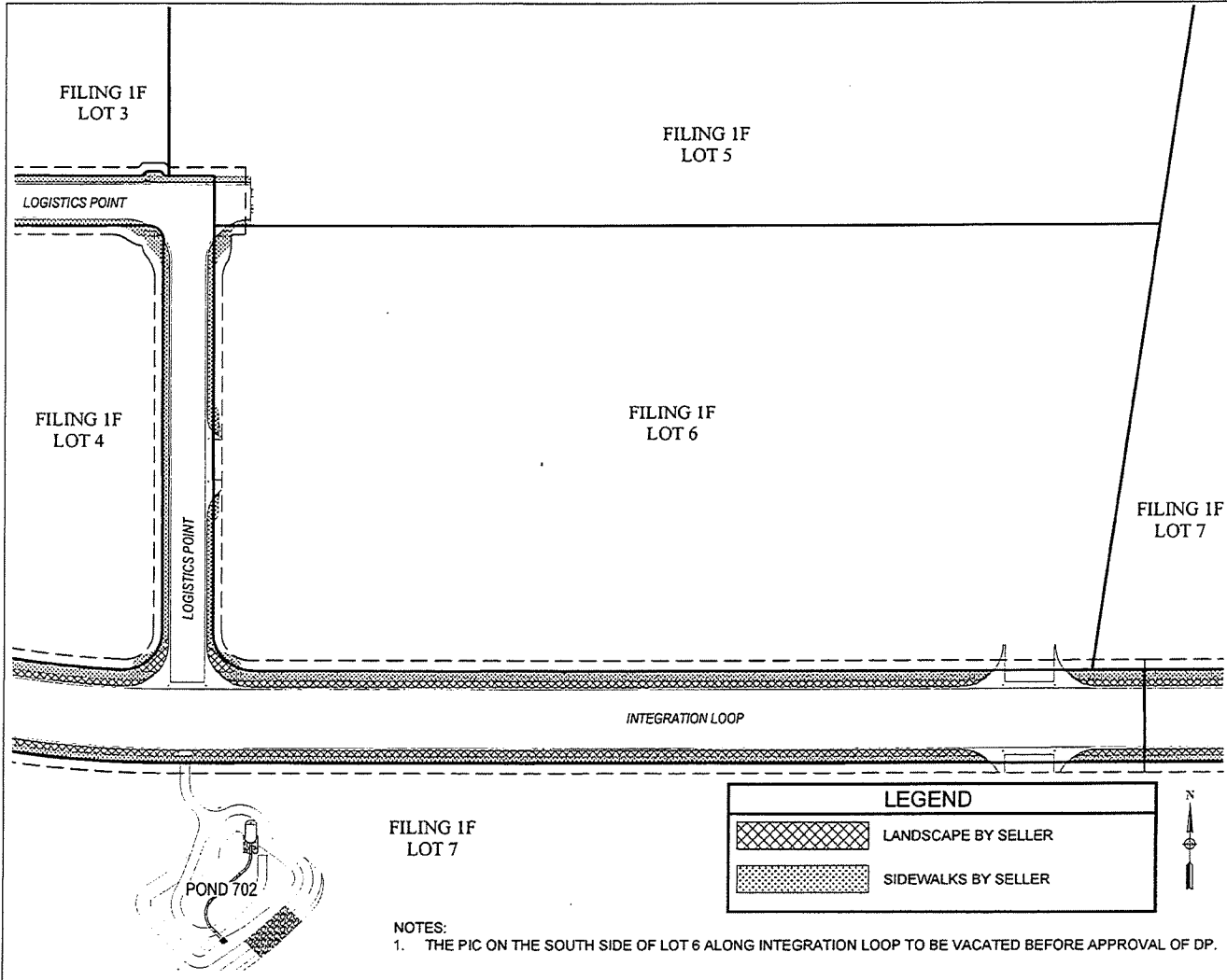


DATE: 4/12/2023
SCALE: 1" = 150'
EXHIBIT: DU-1
COLORADO SPRINGS AIRPORT
FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS
DRY UTILITIES
1515 MARKET STREET DENVER, CO 80202
<b>ENERTIA</b> CONSULTING GROUP, LLC

LEGEND	
— G —	NATURAL GAS
— FO —	FIBER OPTIC
— P —	ELECTRIC
— SL —	STREET LIGHTING







DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: LS-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 LANDSCAPE/IRRIGATION/SIDEWALK

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

**Exhibit C**  
**(Preliminary Plans)**

**See attached.**

**EXHIBIT C - PRELIMINARY PLANS**

AS OF 05/04/2023

Plan Set Title	# of Sheets	Date	Status
<b>Integration Phase 3</b>			
INTEGRATION LOOP PHASE 3 ROADWAY CONSTRUCTION PLANS - AMENDMENT 1	21	1/13/2023	APPROVED
INTEGRATION LOOP PHASE 3 CONSTRUCTION CONTROL MEASURES PLANS	11	11/1/2022	APPROVED
INTEGRATION LOOP PHASE 3 WATER CONSTRUCTION PLANS - AMENDMENT 1	12	3/24/2023	APPROVED
INTEGRATION LOOP PHASE 3 PRIVATE STORM DRAIN CONSTRUCTION PLANS	11	11/1/2022	APPROVED
GRADING AND EROSION CONTROL PLAN FOR INTEGRATION LOOP PHASE 3	12	11/1/2022	APPROVED
INTEGRATION LOOP PHASE 3 WASTEWATER CONSTRUCTION PLANS	6	11/28/2022	APPROVED
<b>Integration Phase 4</b>			
INTEGRATION LOOP PHASE 4 ROADWAY CONSTRUCTION PLANS	11	3/15/2023	PENDING
INTEGRATION LOOP PHASE 4 CONSTRUCTION CONTROL MEASURES PLANS	8	4/16/2023	PENDING
NORWOOD 24-INCH WATER LINE EXTENSION	9	3/25/2023	PENDING
INTEGRATION LOOP PHASE 4 STORM DRAIN CONSTRUCTION PLANS	23	4/16/2023	PENDING
GRADING AND EROSION CONTROL PLAN FOR INTEGRATION LOOP PHASE 4	8	4/16/2023	PENDING
INTEGRATION LOOP PHASE 4 WASTEWATER CONSTRUCTION PLANS	6	3/15/2023	PENDING

**EXHIBIT D**  
**(Preliminary Budget)**

**See attached.**

**EXHIBIT D - PRELIMINARY BUDGET**

<b>DESCRIPTION</b>	<b>TOTAL</b>	<b>Closing-7/31/23</b>	<b>8/1/23-Completion</b>
GENERAL CONDITIONS	495,824	152,349	343,475
GENERAL REQUIREMENTS	42,507	13,061	29,446
<b>DEMOLITION</b>	125,000	125,000	
TRAFFIC CONTROL ALLOWANCE	20,000		20,000
WATERLOOP ALLOWANCE	353,902	141,561	212,341
WEATHER PROTECTION ALLOWANCE	68,000	13,600	54,400
SURVEY AND LAYOUT	152,990	38,248	114,743
SLEEVING (ALLOWANCE)	150,000		150,000
ELECTRICAL SYSTEMS	384,500		384,500
EARTHWORK	1,486,250	1,189,000	297,250
EROSION CONTROL	550,000	110,000	440,000
RETAINING WALLS	624,835		624,835
ASPHALT PAVING (Includes Pond Trail Budget)	1,594,620		1,594,620
SITE CONCRETE	1,014,718		1,014,718
PAVEMENT MARKINGS/SITE SIGNAGE	67,000		67,000
<b>MAINT TRAILS</b>	186,349		186,349
WET UTILITIES	5,017,260	2,006,904	3,010,356
<b>SUB TOTAL</b>	<b>12,333,755</b>	<b>3,789,722</b>	<b>8,544,033</b>
SUBCONTRACTOR DEFAULT INSURANCE	148,005	45,477	102,528
<b>SUB TOTAL</b>	<b>12,481,760</b>	<b>3,835,199</b>	<b>8,646,561</b>
CONSTRUCTION CONTINGENCY	624,088	191,760	432,328
LIABILITY INSURANCE	149,781	46,022	103,759
BUILDER'S RISK INSURANCE	12,482	3,835	8,647
PERFORMANCE BOND	124,818	38,352	86,466
PERMIT FEE (Allowance)	12,482	3,835	8,647
CONTRACTOR'S FEE	670,271	205,950	464,320
<b>TOTAL</b>	<b>14,075,681</b>	<b>4,324,954</b>	<b>9,750,727</b>

**EXHIBIT E**

**(Construction Schedule)**

**See attached.**

Exhibit E - Construction Schedule

Phase 3

-Construction Start – 5/8/23

-Construction Complete – 4/1/24

Phase 4 (dates only included for work to serve Project Raptor site)

-Construction Start – 6/15/23

-Construction Complete – 4/15/24

**EXHIBIT F**

**Milestone Dates**

**See attached.**



## Exhibit F - Milestone Dates

### Phase 3

- Construction Start – 5/8/23
- Temp Access Available via Integration Lp – Date of Closing
- Lot 5 Swale Complete - Date of Closing + 30 days
- Water live to site (via Logistics Pt) – 10/1/23
- All Logistics Point wet utilities complete – 11/1/23
- Shift Temp Access to Embraer - 11/2/23\*
- Integration Loop wet utilities complete - 12/1/23
- Gas Complete - 12/15/23\*\*
- Asphalt bottom/mid mat complete (sufficient for access and occupancy)- 1/2/24
- Electrical Complete - 1/31/24\*\*
- Roadway complete – 4/1/24

### Phase 4 (dates only included for work to serve Project Raptor site)

- Construction Start – 6/15/23
- Water complete at Integration Lp – 12/31/23
- Pond Complete/Storm Stubbed into site – 1/31/24 (SunCap responsible for temporary detention until this date)
- Gas Complete - 1/15/24\*\*
- Asphalt bottom/mid mat complete (sufficient for access and occupancy)- 2/2/24
- Electrical Complete - 3/1/24\*\*
- Roadway complete – 4/15/24

\*Temporary construction access to be provided at all times until permanent roadways are available. Dates for shifting access points are estimates and actual shifts will be preceded by 10 days notice.

\*\*Subject to Colorado Springs Utilities design, procurement, and construction scheduling. Seller does not have direct control over these activities, but will take commercially reasonable measures to ensure the work is completed in accordance with these milestone dates.

## EXHIBIT G

### FORM OF AVAILABILITY OF FUNDS AND STEP-IN RIGHTS AGREEMENT

This **AVAILABILITY OF FUNDS AND STEP-IN RIGHTS AGREEMENT** (“**Agreement**”) is made and entered into this \_\_\_\_ day of June 2023, by and among **PEAK METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), **CITY OF COLORADO SPRINGS**, a Colorado municipal corporation and home rule city by and through its enterprise, the Colorado Springs Municipal Airport (the “**Airport**”), and **PEAK INNOVATION, LLC**, a Delaware limited liability company (the “**Owner**”) (each a “**Party**”, and collectively, the “**Parties**”).

#### RECITALS

A. The Airport owns certain real property located in the City of Colorado Springs, Colorado (the “**City**”), Colorado, and developing thereon a phased mixed-use business park commonly known as Peak Innovation Park (the “**Project**”).

B. The Project is within the boundaries of the District.

C. The District was organized pursuant to a Consolidated Service Plan approved by the City Council for the City of Colorado Springs 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.

D. 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**”).

E. The Public Improvements are necessary for the development of the Project.

F. The Airport and the District entered into that certain Public Improvement Intergovernmental Agreement dated \_\_\_\_\_, 2023 (the “**Peak IGA**”), whereby, among other things, the Airport delegated to the District, and the District has agreed, either directly or with the efforts and cooperation of the District Developer (as defined below) and other service providers, to cause the design and construction of Public Improvements serving the Project.

G. The District and UFCS Airport, LLC, a Colorado limited liability company (the “**District Developer**”) entered into that certain Facilities Acquisition and Payment Agreement dated November 30, 2022 (as may be amended from time to time, the “**Developer Acquisition Agreement**”), whereby the District Developer agreed, on behalf of the District, to cause through

third party contracts with engineers, surveyors, contractors, consultants and other construction professionals, the construction, completion and funding of certain Public Improvements and, to the extent the requirement of the Developer Acquisition Agreement are met, the District will reimburse the District Developer for the Construction Costs (as such term is defined in the Developer Acquisition Agreement) associated with the Public Improvements in accordance with the terms therein.

H. Concurrently herewith, Owner has purchased from the Airport certain property within the boundaries of the District, as more fully described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Owner Property**").

I. In conjunction with the Owner's purchase of the Owner Property, the Airport and the Owner entered into that certain Development Agreement dated \_\_\_\_\_, 2023 (as may be amended, modified, restated and supplemented from time to time, the "**Owner Development Agreement**") which, in part, describes the obligation of the Airport to cause the installation of certain offsite improvements, which such offsite improvements are more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Offsite Improvements**"). Certain Offsite Improvements may qualify as eligible Public Improvements under the Peak IGA and the Developer Acquisition Agreement (hereinafter, such eligible Public Improvements shall be referred to herein as the "**District Improvements**").

J. In order for the Owner Property to be developed and utilized, the District Improvements need to be constructed.

K. Funds related to the design, testing, engineering, and construction of the District Improvements, together with the related consultant fees associated with the construction of the District Improvements, have been and/or will be subject to payment and/or reimbursement by the District to construct the District Improvements ("**Construction Related Expenses**"). Estimates of the Construction Related Expenses related to the District Improvements are indicated on the attached **Exhibit C**.

L. The District has agreed to reimburse the District Developer for the Construction Related Expenses associated with the District Improvements in accordance with the Developer Acquisition Agreement.

M. The District has 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 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 and the District is willing to utilize proceeds from the Bonds for construction and/or acquisition of the District Improvements and payment of Construction Related Expenses in accordance with the Developer Acquisition Agreement and the terms and provisions of this Agreement.

N. Owner has requested assurances from the District and the Airport that the District Improvements will be completed in accordance with the terms of the Owner Development Agreement.

O. It is in the best interests of the taxpayers and inhabitants in the District's service area that the District Improvements be constructed.

P. The Parties now desire to enter into this Agreement in order to set forth the terms and conditions under which the District and the Airport will provide assurances to Owner that the District Improvements will be constructed upon an agreed upon deadline and sets forth the conditions upon which Owner will be permitted to step-in and manage the completion of the District Improvements, if required, together with such other matters as are set forth hereinafter.

Q. The District, the Airport and the Owner desire to acknowledge the appropriation of the proceeds of the Bonds to pay the Construction Related Expenses associated with the District Improvements.

R. Any capitalized term used but not defined herein shall have the meaning given such term in the Owner Development Agreement.

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. Incorporation of Recitals. The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

2. District Improvement Funding. The Parties estimate the total cost of the District Improvements to be approximately \$14,075,680.00 ("**District Improvement Costs**"). The final budget for the District Improvement Costs ("**Final Budget**") as may be amended from time to time ("**Amended Budget**"), will be attached as an exhibit to any amendment to the Owner Development Agreement. Any Amended Budget will also be provided to the District. As a result of the District's issuance of the Bonds, the District appropriated and has funds currently on deposit to fund the District Improvements in excess of the Final Budget as of the date hereof (the "**District Project Funds**"). The District will use the District Project Funds as needed to pay the Construction Related Expenses, or to reimburse the District Developer or Owner (relative to any Step-In Right Work (as defined below)) for Construction Related Expenses, in accordance with the Agreement or with the procedures set forth in the Developer Acquisition Agreement, as applicable.

3. Construction Contracts and Performance. The Airport hereby confirms its delegation of the Airport's construction obligations with respect to the District Improvements to the District in accordance with the terms of the Peak IGA. The District hereby agrees to instruct the District Developer to proceed with construction of the District Improvements and pursue construction of the District Improvements to completion in accordance with the terms of the Owner Development Agreement. The Parties hereby acknowledge that each have received and reviewed

the terms and conditions of the Owner Development Agreement and a true and complete copy thereof is attached to this Agreement as Exhibit C.

4. Owner Step-In Rights. In accordance with the terms of this Agreement, the Airport and the District agree to grant the following step-in rights to Owner as set forth below.

(a) Notice of Breach and Assumption If Owner determines that the Airport has failed to cause the timely construction of the District Improvements (the “**Incomplete District Improvements**”) pursuant to the terms of the Owner Development Agreement, and if the Airport fails to cure as required by the Owner Development Agreement, and as a result of such failure the Owner thereafter elects to deliver to the Airport a Notice of Breach pursuant to Section 6.1 of the Owner Development Agreement, Owner shall concurrently provide to the District a copy of the Notice of Breach. Provided Owner concurrently delivers a Notice of Breach to the District as required herein, the District shall have the same amount of time as the Airport under the Owner Development Agreement to cause the cure of the breach set forth in the Notice of Breach. If the breach is not timely cured in accordance with the Owner Development Agreement and Owner elects to deliver an Assumption Notice pursuant to the terms of Section 6.1 of the Owner Development Agreement, Owner shall concurrently provide to the District a copy of the Assumption Notice.

(b) Owner Step-In Rights. If Owner properly exercises its self-help rights pursuant to Section 4(a) of this Agreement and the terms of the Owner Development Agreement, Owner shall promptly commence thereafter its step-in rights in accordance with Section 6.2 of the Owner Development Agreement (the “**Owner Step-In Rights**”) no later than thirty (30) days following Owner’s delivery of the Assumption Notice to the Airport and the District (the “**Owner Exercise Period**”), and, in furtherance thereof, Owner will be assigned that portion of the construction contract covering the Incomplete District Improvements to manage the completion of the Incomplete District Improvements (the “**Step-In Right Work**”), including the coordination of the construction contract related to such work. During the Owner Exercise Period, Owner shall cause the completion of the Step-In Right Work, and the District, in coordination with the District Developer, shall reasonably cooperate to make additional revisions to the construction contract necessary to permit the completion of the Incomplete District Improvements by Owner in accordance with the Final Budget, Construction Schedule and Approved Plans (the “**Construction Contract**”). Notwithstanding the foregoing, as a condition to Owner’s assumption and assignment of the Construction Contract, (a) the District Developer shall be released from any and all liability under the Construction Contract first arising from and after the date of assumption by Owner; and (b) Owner shall be released from any and all liability under the Construction Contract first arising before and prior to the date of assumption by Owner. Following the assumption thereof, Owner will manage the completion of the respective portion of the Construction Contract in accordance with the Final Budget, Construction Schedule and Approved Plans. The Parties recognize that certain step-in rights may further be granted and/or assigned to the Owner’s lender for the Property in conjunction with the Owner Development Agreement and, as such, during any Owner Exercise Period, the Parties agree to reasonably cooperate to negotiate and enter into such documents as may be necessary under the Owner Development Agreement and relative to the Owner’s lender for the Property so that such lender will have substantially the same rights as are granted to Owner in this Agreement.

(c) Assumption Notice. Any Assumption Notice will include (i) the description of the Incomplete District Improvements, (ii) the related Milestone Dates (as defined in the Owner Development Agreement) under the Construction Schedule that were missed, (iii) the date and time of the assumption of the Construction Contract related responsibilities by Owner, which date must be within the Owner Exercise Period, and (iv) copies of the Certification of Liability Insurance Coverage required in Section 7.

5. Owner Assumption Responsibilities. Upon Owner's assumption of the Construction Contract, or any portion thereof, Owner shall diligently pursue Completion of the Incomplete District Improvements in accordance with the Final Budget, Construction Schedule and Approved Plans, and Owner will be required to report to the District Board on a monthly basis, or more frequently if required by the District, as to the status of completion of the respective portion of the Incomplete District Improvements for which Owner has elected to exercise the Owner Step-In Rights. Provided Owner follows the procedures in this Section 5, upon receipt of the certification required by Section 6 hereof, the District will reimburse Owner from the District Project Funds for Owner's Certified Construction Costs (as defined below). Owner will not be reimbursed under this Agreement for any costs and expenses not otherwise contemplated by the Final Budget. Owner will work with the District Accountant and the District Engineer to ensure that all documentation required to process the release of the District Project Funds, on a monthly basis, is completed in full and properly delivered to assure timely payment is made to the construction contractor under the Construction Contract, and so long as such documentation is provided on a timely basis (and such other requirements under this Section 5 and Section 6 are satisfied) the District will make timely payment to the Owner. The District shall make District Project Funds available for payment of the costs incurred under the Construction Contract and disburse from the District Project Funds the appropriate amounts only upon receipt, review and approval by the District's Accountant and Engineer of the following:

(a) Lien waivers from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, or an indemnification from Owner holding the District harmless from any claims for unpaid labor or materials related to the Incomplete District Improvements, each in a form reasonably acceptable to the District.

(b) Copies of all contracts, pay requests, change orders, invoices and evidence of payment of same, the final AIA payment form (or similar form approved by the District), canceled checks, and any other requested documentation to verify the amount of reimbursable costs associated with construction of the Incomplete District Improvements requested; and

(c) Such other documentation, records and verifications as may reasonably be required by the District.

6. Certification of Construction Costs. The Parties hereby agree that a condition precedent to the District's release of District Project Funds for costs incurred under the Construction Contract shall be the District's receipt of a written certification of an independent engineer engaged by the District that the construction costs of the Incomplete District Improvements are reasonable and comparable to the costs of similar public improvements constructed in the Denver and Colorado Springs Metropolitan Areas. Such independent engineer's determination shall be conclusive regarding the amount of District Project Funds the District shall

be obligated to release for payment under this Agreement (“**Certified Construction Costs**”), notwithstanding the fact that the actual construction costs incurred may exceed the Certified Construction Costs.

7. Insurance. Prior to, and as a condition to, the assumption of the Construction Contract by the Owner, Owner will provide the District with Certificates of Insurance evidencing that it has the following insurance coverages.

(a) Liability Insurance Coverage.

(i) Workers’ Compensation Insurance. A Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to the District and in an amount not less than the statutory benefits, including Employer’s Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee; and (iii) \$500,000 aggregate liability for disease. The Workers’ Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of the District.

(ii) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to the District, which policy shall include, without limitation, the District as an additional insured, a waiver of subrogation endorsement in favor of the District, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the insurance policy or policies is primary and non-contributing with any other insurance maintained by or available to the District, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage Liability; Contractual Liability supporting the Consultant’s indemnification agreements in favor of the District; Completed Operations and Products Liability; and Independent Contractor’s Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability.

(b) Automobile Liability Insurance. An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to the District. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and non-owned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each accident for bodily injury and/or property damage.

8. Term; Repose. This Agreement shall automatically terminate upon the later of (i) the Completion Date, as defined below, or (ii) once all of the Certified Construction Costs related to the District Improvements under the Owner Development Agreement have been disbursed in accordance with the terms and conditions of this Agreement. The District Improvements shall be deemed Completed pursuant to the terms of Section 5.2 of the Owner

Development Agreement (the “**Completion Date**”). The Parties may terminate this Agreement prior to the Completion Date upon mutual agreement.

9. 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  
450 East 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attention: Megan Becher  
Email: [legalnotices@specialdistrictlaw.com](mailto:legalnotices@specialdistrictlaw.com)

To Airport: City of Colorado Springs  
30 South Nevada Avenue, Suite 604  
Colorado Springs, Colorado 80901  
Attn: Troy Stover, Business Park Development Director  
E-mail: [Troy.Stover@coloradodprings.gov](mailto:Troy.Stover@coloradodprings.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](mailto:David.Andrews@coloradosprings.gov)

To Owner: Peak Innovation, LLC  
6106 Carnegie Boulevard, Suite 180  
Charlotte, North Carolina 28209  
Attn: Jason Bria, Esq.  
Email: [jbria@suncappg.com](mailto:jbria@suncappg.com)

Peak Innovation, LLC  
1125 17<sup>th</sup> Street, Suite 800  
Denver, Colorado 80202  
Attn: Mike Orr  
Email: [morr@suncappg.com](mailto:morr@suncappg.com)

With a copy to: Otten Johnson Robinson Neff & Ragonetti PC  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attn: Jed Sonnenshein  
Email: [jsonnenshein@ottenjohnson.com](mailto:jsonnenshein@ottenjohnson.com)



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.

10. Assignment; Binding Effect. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent may be withheld in any Party's sole and absolute discretion, except as may otherwise be provided herein. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

11. 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, Owner and the Airport 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, Owner and Developer shall be for the sole and exclusive benefit of the District, Owner, and the Airport.

12. Default/Remedies. In the event of a breach or default of this Agreement by any 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.

13. 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 City and County of Broomfield, Colorado.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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, Owner or the Airport unless the same is in writing and duly executed by the Parties hereto.

**SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**DISTRICT:**

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

**[Exhibit Only—Do Not Sign]**

By: \_\_\_\_\_  
Garrett Baum, President

Attest:

\_\_\_\_\_  
Secretary

**AIRPORT:**

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

**[Exhibit Only—Do not sign]**

By:

\_\_\_\_\_  
Yemi Mobolade  
Mayor

Date:

\_\_\_\_\_

Attest:

\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
Troy Stover  
Business Park Development Director

\_\_\_\_\_  
**APPROVED AS TO FORM:**

\_\_\_\_\_  
David Andrews, Office of the City Attorney

**OWNER:**

**PEAK INNOVATION, LLC,**  
a Delaware limited liability company

By: Peak Innovation Investments, LLC,  
a Delaware limited liability company

Its: Manager

By: **[Exhibit Only-Do not sign]**

\_\_\_\_\_  
Jason K. Bria

Its: Authorized Signatory

**EXHIBIT A**  
**AVAILABILITY OF FUNDS AND STEP-IN RIGHTS AGREEMENT**

**Owner Property**

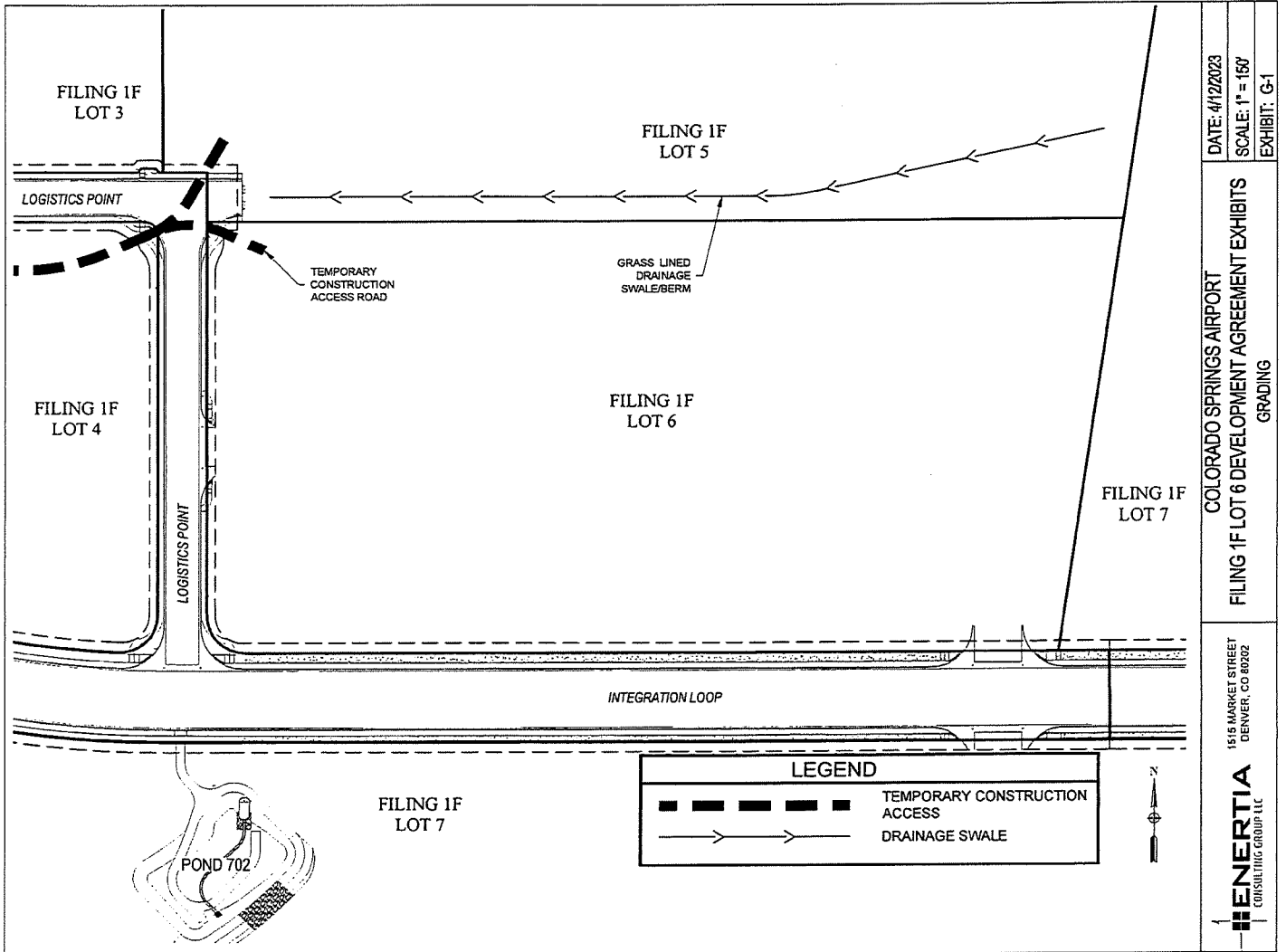
Lot 6, Colorado Springs Airport Filing No. 1F plat recorded on September 20, 2022, and recorded at Reception Number 222715016 in the Clerk and Recorder's Office of El Paso County, Colorado.

**EXHIBIT B**  
**AVAILABILITY OF FUNDS AND STEP-IN RIGHTS AGREEMENT**

**Offsite Improvements**

**See attached.**

EXHIBIT B



DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: G-1

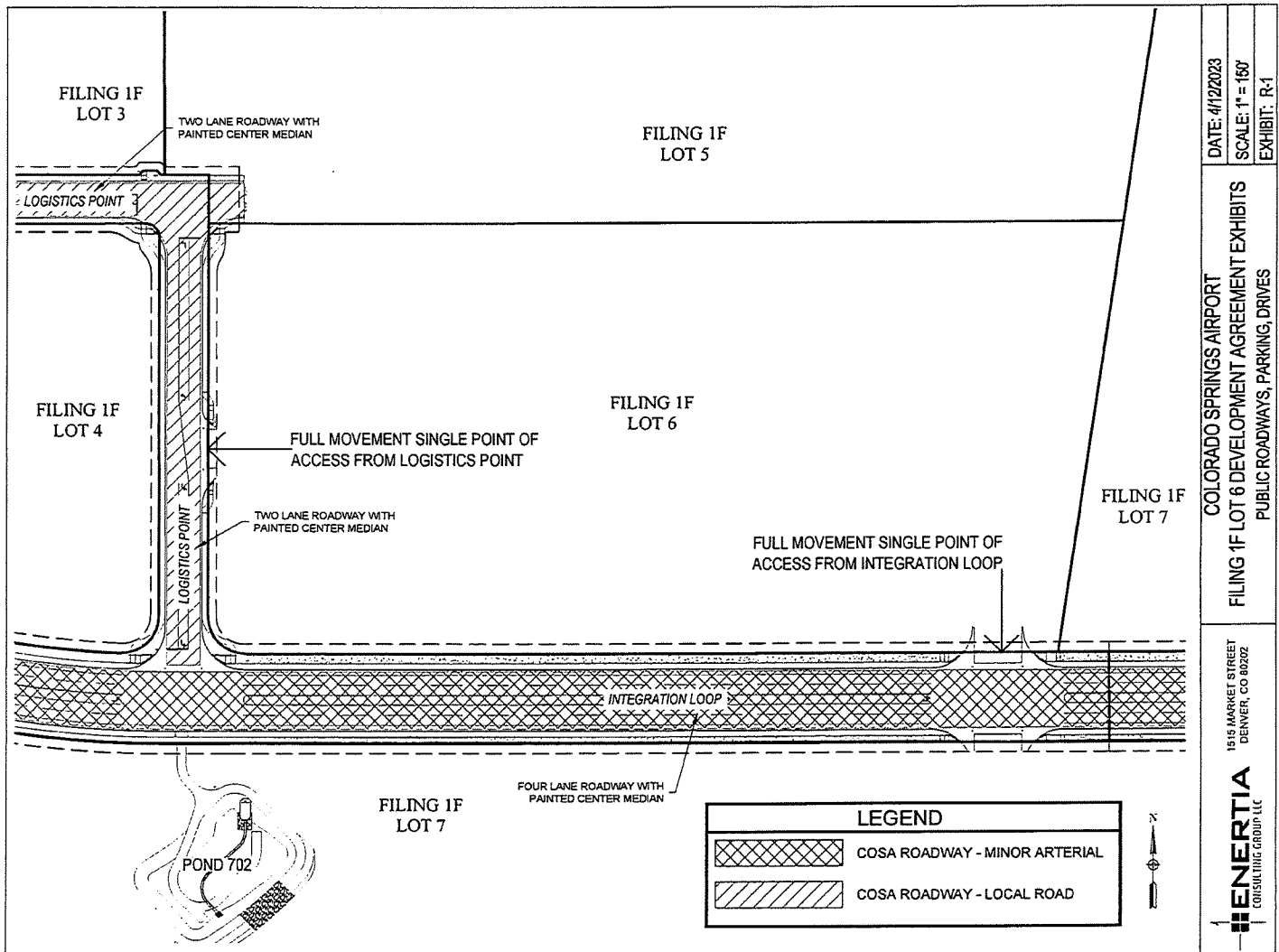
COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 GRADING

1515 MARKET STREET  
 DENVER, CO 80202

**HENERTIA**  
 CONSULTING GROUP, LLC



EXHIBIT B



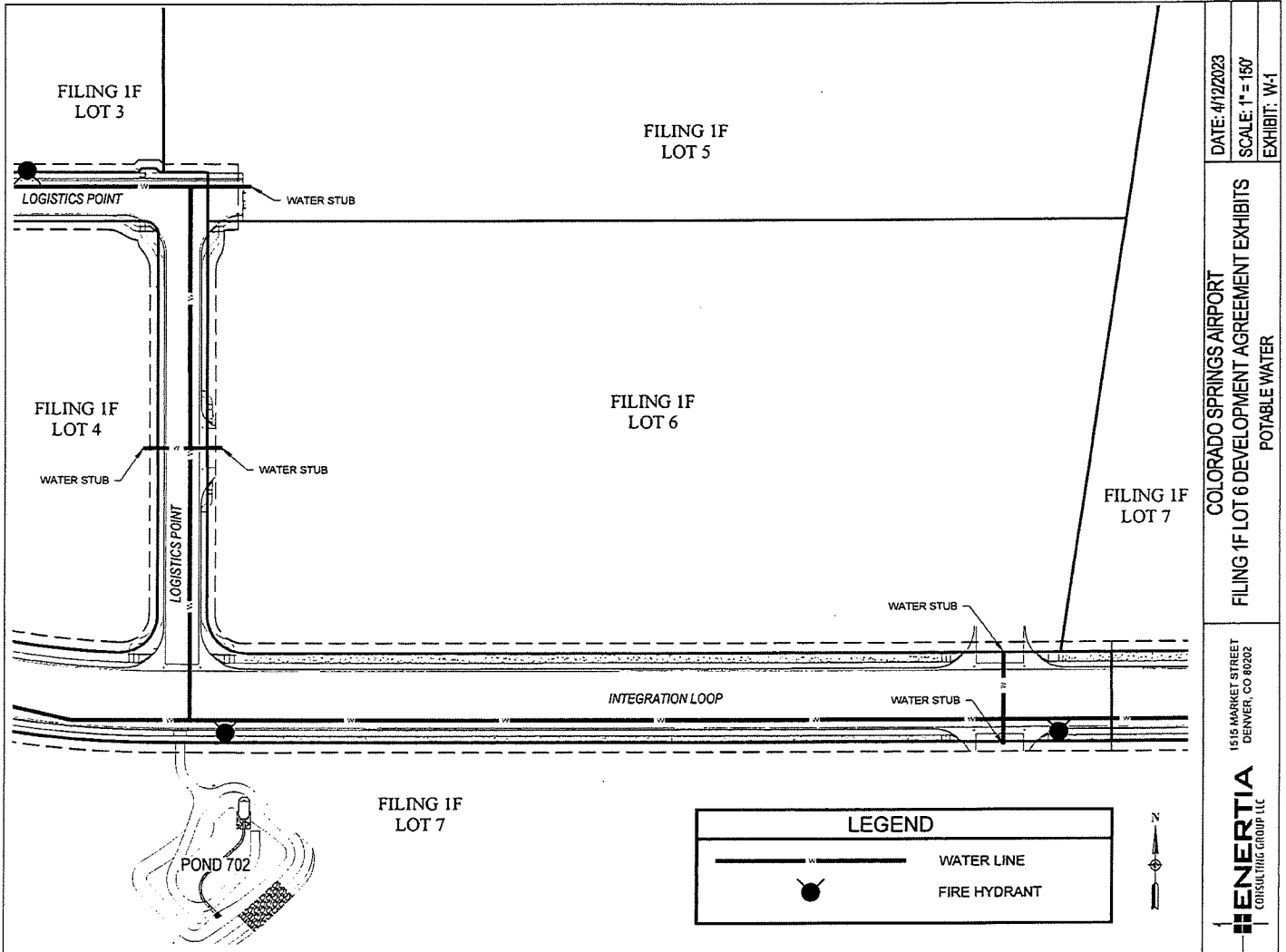
DATE: 4/12/2023  
 SCALE: 1" = 160'  
 EXHIBIT: R-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 PUBLIC ROADWAYS, PARKING, DRIVES

1915 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

EXHIBIT B



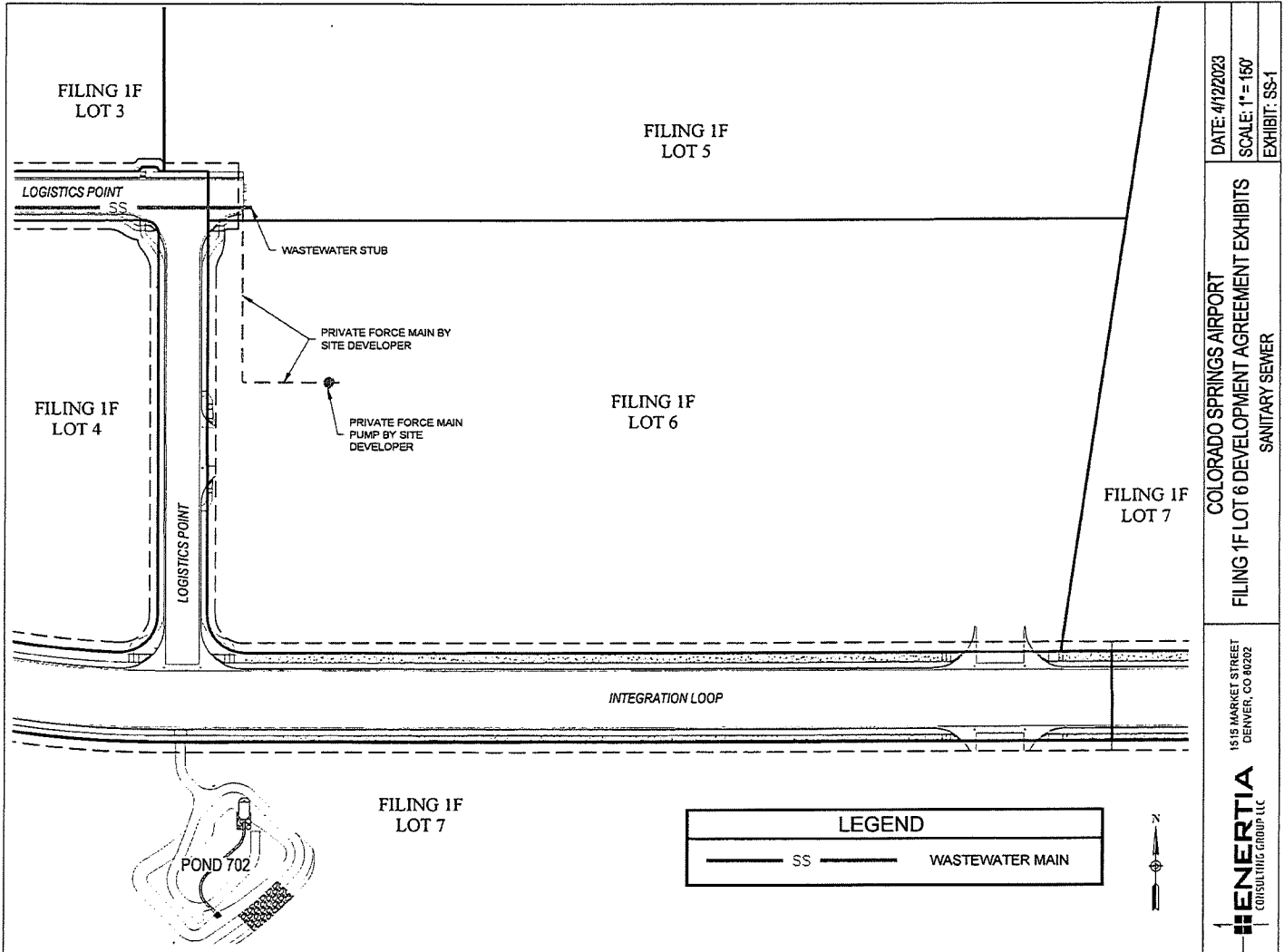
DATE: 4/12/2023  
SCALE: 1" = 150'  
EXHIBIT: W-1

COLORADO SPRINGS AIRPORT  
FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
POTABLE WATER

1516 MARKET STREET  
DENVER, CO 80202

**ENERTIA**  
CONSULTING GROUP, LLC

EXHIBIT B



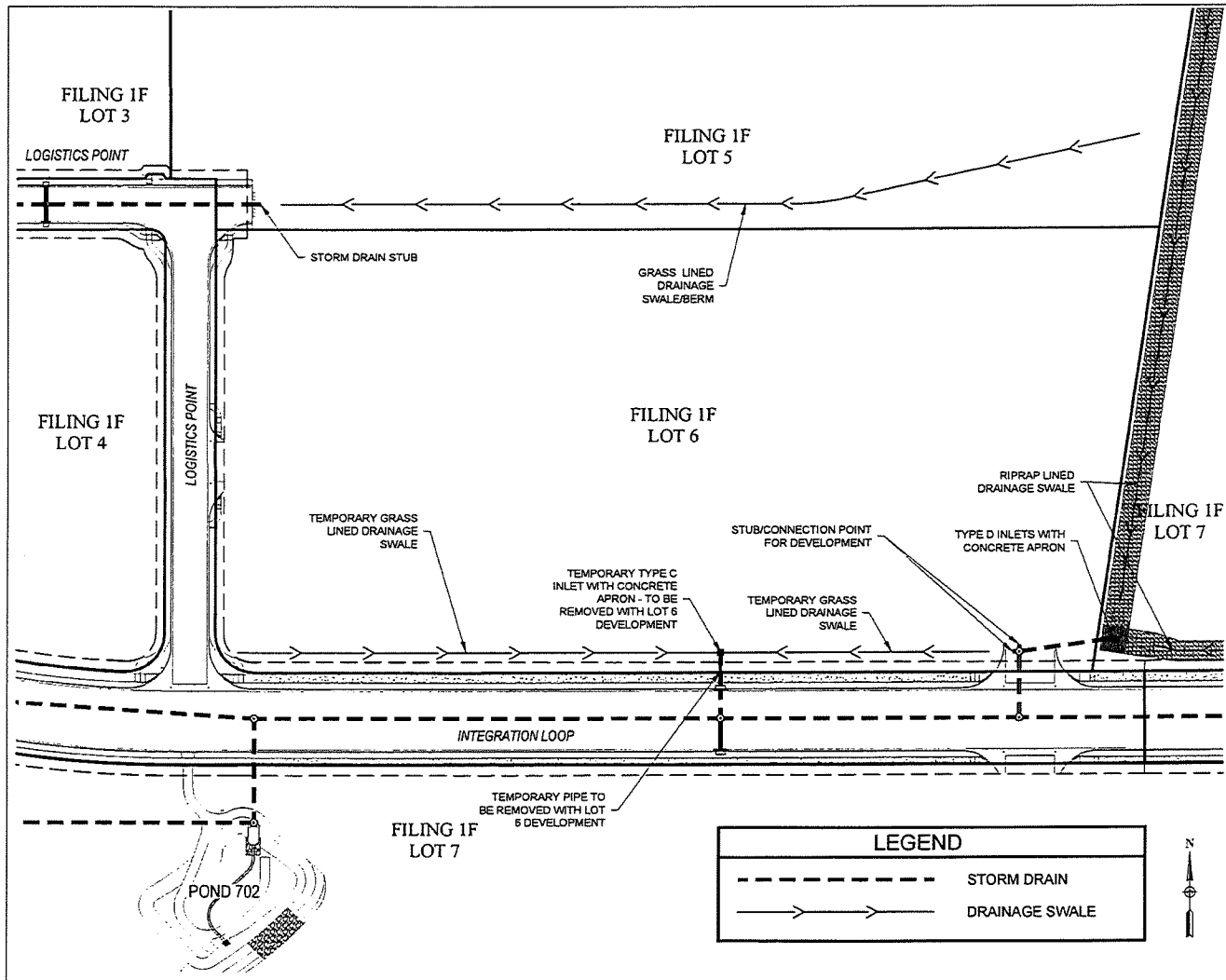
DATE: 4/12/2023  
SCALE: 1" = 150'  
EXHIBIT: SS-1

COLORADO SPRINGS AIRPORT  
FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
SANITARY SEWER

1515 MARKET STREET  
DENVER, CO 80202

**ENERTIA**  
CONSULTING GROUP, LLC

EXHIBIT B



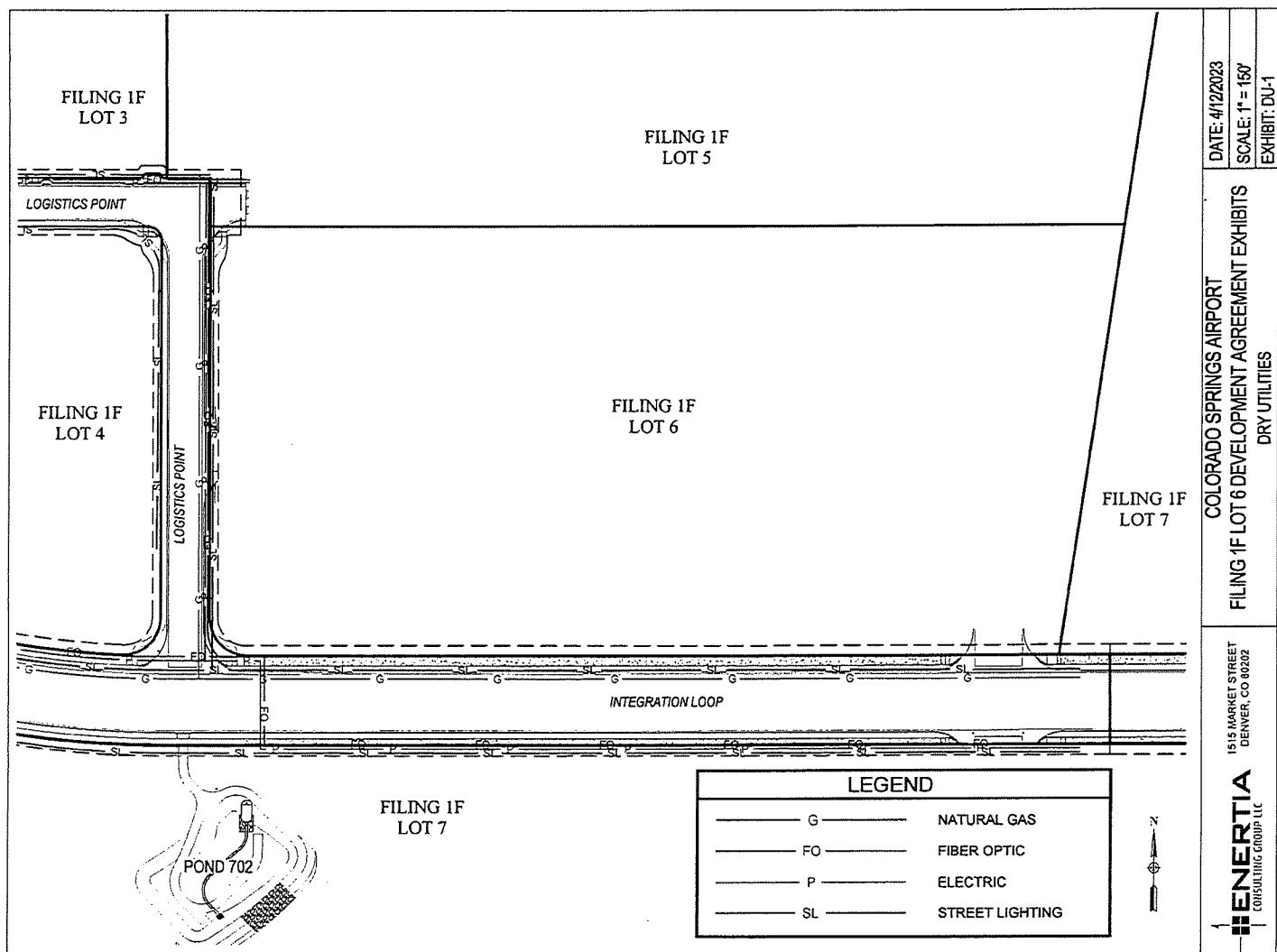
DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: SD-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 STORM DRAINAGE

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

EXHIBIT B



DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: DU-1

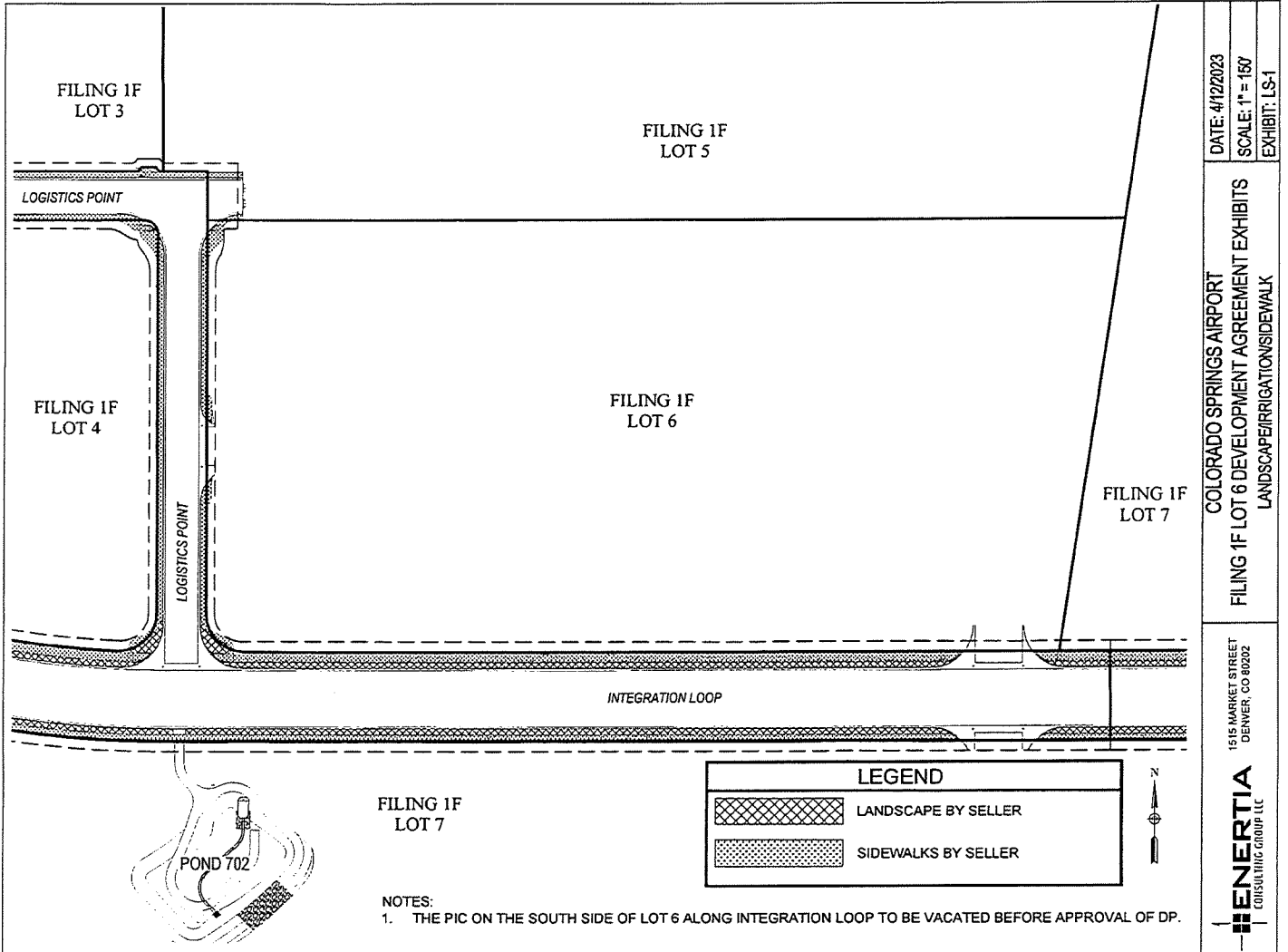
COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 DRY UTILITIES

1515 MARKET STREET  
 DENVER, CO 80202

**ENERTIA**  
 CONSULTING GROUP, LLC

LEGEND	
— G —	NATURAL GAS
— FO —	FIBER OPTIC
— P —	ELECTRIC
— SL —	STREET LIGHTING

EXHIBIT B



DATE: 4/12/2023  
 SCALE: 1" = 150'  
 EXHIBIT: LS-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 LANDSCAPE/IRRIGATION/SIDEWALK

1515 MARKET STREET  
 DENVER, CO 80202

**HENERTIA**  
 CONSULTING GROUP, LLC

**EXHIBIT C**

**AVAILABILITY OF FUNDS AND STEP-IN RIGHTS AGREEMENT**

**Owner Development Agreement**

**See attached.**

*supply Exhibit C on execution*

## EXHIBIT H

### FORM OF PEAK INNOVATION ACCESS LICENSE AGREEMENT

#### REVOCABLE LICENSE FOR USE OF CITY PROPERTY

For The Benefit of PEAK INNOVATION, LLC

This *Revocable License For Use of City Property* (“**Revocable License**”) is made between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation (“**City**”), through its enterprise the Colorado Springs Municipal Airport (“**Airport**”) (Collectively the “**City**”), and Peak Innovation, LLC, a Delaware limited liability company authorized to do business in the State of Colorado (“**Licensee**”). This Revocable License is effective on the date that the Revocable License is signed by the Director of Aviation (“**Effective Date**”).

#### RECITALS

- A. The City is a home rule city, as provided for in Article XX, § 6 of the Colorado Constitution.
- B. City owns and controls the land generally described on **Exhibit A** (“**Licensed Premises**” or “**Licensed Property**”), situated in Colorado Springs Airport Filing No. 1F, as recorded September 20, 2022, at Reception No. 222715016 in the Real Property Records of the El Paso County, Colorado, Clerk and Recorder (“**Plat 1F**”).

The parties, therefore, agree as follows:

#### TERMS AND CONDITIONS

1. **Incorporation of Recitals:** The recitals set forth above are hereby adopted as the agreement of the parties and the facts set forth therein are acknowledged and agreed by the parties to be true, accurate, and complete.
2. **Grant of Revocable License; Licensee Responsible for Maintenance:** This Revocable License is solely for the purpose of accessing Airport property in order to provide to Licensee and its contractors and consultants (i) temporary access over and across those portions of the southern boundary of Lot 5, in Plat 1F, of the Licensed Property identified on **Exhibit B** attached hereto for construction and staging purposes in conjunction with Licensee’s completion of a retaining wall(s) to be constructed on Licensee’s property (the “**Construction and Staging License**”), (ii) ongoing access rights for purposes of completing Licensee’s construction and maintenance obligations with respect to storm drainage swale and connection to the storm sewer stub located on Lot 5, in Plat 1F, of the Licensed Property identified on Exhibit B (the “**Swale Maintenance Obligations License**”), and (iii) temporary construction access from Embraer Heights over Lots 3, 4 and 5, in Plat 1F, of the Licensed Property identified on Exhibit B (the “**Construction Access License**”). Licensee shall have the right to enter upon and use the Licensed Property for the purposes above, and no other purpose. All costs in connection with Licensee’s activities upon the Licensed Premises are at Licensee’s sole cost and expense.
3. **Term:** With respect to the wale Maintenance Obligations License, this Revocable License begins on the Effective Date and shall expire upon the transfer of ownership by the City of Lot 5, in Plat 1F, to a third party unless sooner revoked in writing by the City in accordance



with this Revocable License. With respect to the Construction and Staging License, This Revocable License begins on the Effective Date and shall expire after six (6) months (subject to delays caused by Uncontrollable Events (as defined below)) from the Airport's receipt of written notice from Licensee of its need to access the Licensed Premises for Construction and Staging purposes. Licensee agrees to commence the work related to the Construction and Staging no later than ninety (90) days from the Effective Date (subject to Uncontrollable Events), and to diligently pursue the completion of such work. Notwithstanding any contrary provision of this Revocable License, the time for performance and other deadlines set forth herein shall be extended by a period of time equal to any period that progress in construction is delayed due to a strike, riot, act of war, act of violence, unusual delays of applicable governmental agencies, any delays caused by Colorado Springs Utilities ("CSU"), unseasonable or intemperate weather, act of God, labor and material shortages, or any similar act, occurrence or non-occurrence beyond a party's reasonable control (each, an "Uncontrollable Event"). The party claiming an Uncontrollable Event must notify the other party in writing within a reasonable time, but not later than fifteen (15) days of the notifying party becoming aware of the actual circumstances of the Uncontrollable Event. The written notice of any Uncontrollable Event must contain a description of the circumstances causing the Uncontrollable Event and the length of the corresponding delay. With respect to the Construction Access License, this Revocable License begins on the Effective Date and shall expire upon the construction of the Airport roads shown in Plat 1F, being Logistics Point and Integration Loop, with continuous, uninterrupted access to Lot 6, in Plat 1F, over said Airport roads.

4. **Surface Restoration:** Licensee shall, at Licensee's sole cost and expense, reasonably restore and repair the surface of the Licensed Premises and any surrounding area affected by any survey, ordinary wear and tear are expected.

5. **Licensed Premises Subject to Encumbrances:** Licensee acknowledges that this Revocable License is granted subject to all existing easements and other encumbrances upon the Licensed Premises. The City retains the right to make full use of the Licensed Premises for the purposes of installing utilities and any other purposes deemed necessary by the City. Licensee shall not injure or interfere with any existing or future (i) City utilities, facilities, other licenses, or easement rights; and (ii) nonparty Leasehold interest, licenses, easements, and ownership interest.

6. **City Access:** Licensee shall allow City, its employees, agents, and contractors to access the Licensed Premises to abate an emergency, service utilities or other City facilities located on and under the Licensed Premises, show the Licensed Premises to prospective tenants or buyers, and other purposes reasonably deemed necessary by the City.

7. **Noninterference:** Licensee, its successors, and assigns shall not interfere with the City's purpose and use of the Licensed Premises except in the exercise of the rights granted hereunder. Licensee shall not restrict the City's access or use of the Licensed Premises in any manner whatsoever, except in the exercise of the rights granted hereunder. Licensee shall not construct any improvement on the Licensed Premises.

8. [Intentionally deleted]

9. **Conduct on the Licensed Premises:** Licensee shall conduct its activities on the Licensed Premises in an orderly and proper manner. Licensee shall maintain the Licensed Premises in a reasonably clean and neat condition at all times, including removal of garbage and

other debris. Except with respect to activities, installations or improvements which are approved or authorized by the FAA: (a) Licensee shall not install any lighting that is not approved by the Airport Operations Divisions, and shall take reasonable measures to eliminate unusual nauseous or objectionable smoke, gases, vapors, odors, noise, and vibrations; (b) Licensee shall not conduct any activity that interferes with or is a hazard to the navigation, flight, taking off or landing of aircraft without the consent and approval of the Airport's Operations Division and the Federal Aviation Administration, and; (c) if Licensee or Licensee's contractors, agents, or employees conduct any activity that interferes with flight operations at the Airport or causes a hazard to the navigation, flight, taking off or landing of aircraft, then the Airport Director, his designee, or the Airport Operations Division is hereby granted authority to immediately order the abatement of such activity and/or suspend this Revocable License until the interference and/or hazard is abated; (d) the Airport Director, his designee, or the Airport Operations Division or any federal agency authority has the right to suspend or revoke badges for security violations, City will not be held liable for damages due to revocation of badges. All activities that could affect aircraft shall be coordinated with the Airport's Operations Division and shall be approved by the Federal Aviation Administration.

10. **Licensee Responsible for Damage:** Licensee, whether inside or outside of the Licensed Premises, shall at the election of the City repair or reimburse the City for the reasonable cost of repair for any physical damage to the Licensed Premises and other City property caused by Licensee's or its contractor's, agent's, employee's, or representative's activities or omissions associated with this Revocable License.

11. **Subjacent and Lateral Support:** The activities of Licensee, its employees, contractors, and representatives, shall not impair the lateral or subjacent support of any City facility, improvement, or property, including the Licensed Premises. Should Licensee's activities impair the lateral or subjacent support on any City property, facility, or improvement, Licensee shall immediately correct the issue satisfactory to the City, at Licensee's sole cost and expense.

12. **Assignment:** Licensee shall not have the right to assign or otherwise transfer this Revocable License or any right or obligation hereunder without the prior written consent of the City.

13. **License Runs with the Land:** It is the intent of the parties that this Revocable License shall be deemed to run with the City's property.

14. **Liens:** Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, materials, or services claimed by, through, under, or against Licensee.

15. **Governing Law and Jurisdiction:** This Revocable License is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado. Licensee shall ensure that its and its employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and local laws and regulations as now written or hereafter amended.

16. **Disclaimer:** The City hereby disclaims any warranty of title with respect to the Licensed Premises. Licensee is relying on its own investigations as to the adequacy of the Licensed Premises described herein for its use under this Revocable License. Without limiting the foregoing, the grants of rights set forth herein are subject to all easements, restrictions, reservations, and rights of way of record. The City further disclaims any warranty with respect to the physical condition of the Licensed Premises described herein, including, without limitations, the fitness of such Licensed Premises for any particular purpose and/or the condition of the soils contained therein. Licensee acknowledges that it is accepting its right to use the Licensed Premises described herein on an as-is, where-is, and with all faults basis.

17. **Indemnification, Defend and Hold Harmless:** Licensee agrees that it shall indemnify, defend and hold harmless the City, its officers, employees, City Council members, and agents (collectively, “City Parties”), from and against any and all loss, damage, demand, injuries, claims, cause or causes of action, expense of whatever nature (including without limitation attorneys’ fees and costs) and any liability whatsoever (collectively, “Claims”) to the extent resulting from, or arising out of, or in connection with the Licensee’s obligations, actions, breach, or use under this Revocable License, except to the extent that such Claims result from, or arise out of or in connection with, the negligence or willful misconduct of any City Parties or any parties on the Licensed Property other than Licensee or its contractors or consultants. Such indemnity by Licensee shall specifically include, but not be limited to, any environmental Claims as set forth in. The obligations set forth in this Section 17 shall expressly survive the expiration and termination of this Revocable License for a period of one year.

18. **Limitation of Damages:** Neither party shall be liable to the other for any lost profits, special, incidental, punitive, exemplary, or consequential damages, including, but not limited to loss of economic or business expectations, loss of profits, loss of capital, cost of substitute products, facilities, services, or down time costs.

19. **Insurance:** Licensee shall procure and maintain in full force and effect, for the entire Term of this Revocable License, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Revocable License. Prior to any entry on all or any portion of the Licensed Premises, Licensee shall provide the City with a certificate of insurance on an Accord form providing the insurances required herein. Licensee shall maintain insurance coverages required pursuant to this Section 19 and shall include the City as additional insured on the policies required herein, to the extent of losses arising from Licensee’s indemnity obligations. Prior to any entry on all or any portion of the Licensed Premises, Licensee shall provide the City with a certificate of insurance on an Accord form providing the insurances required herein, Licensee shall provide that such insurance coverage will not be canceled or reduced by Licensee without at least thirty (30) days prior written notice to the City. The insurance coverages required to be maintained by Licensee shall include (i) commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate covering bodily injury, personal injury, death, property damage and contractual liability, and no such policy shall include any exclusion for explosion, collapse or underground activities; and (ii) commercial automobile liability with limits of One Million Dollars (\$1,000,000.00) combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used on the Leased Premises. The insurance requirements provided herein shall not in any way limit Licensee’s indemnity obligations or any other Licensee obligations provided in this Revocable License.

20. **Governmental Immunity Act:** Nothing in this License shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

21. **Nondiscrimination:** Licensee acknowledges that the 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 the City receives federal financial assistance.

As used below, the term “contractor” shall mean Licensee, the term “sponsor” shall mean the City, and the term “contract” shall mean this Revocable License.

- a. 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:
  1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will 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.
  2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  3. **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 leases 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 of race, color, or national origin.
  4. **Information and Reports:** The contractor will 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 Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **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 Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration 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.

b. The Licensee for 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. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Revocable License 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, the Licensee will maintain and operate such facilities and services in compliance with all 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.

The Licensee 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, 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, (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, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Licensee will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

d. In the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate this Revocable License and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Revocable License had never been made or issued.

e. **Title VI List of Pertinent Nondiscrimination 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:

- 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);
- 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);
- 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);
- 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 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- Titles II and III of the Americans with Disabilities Act of 1990, 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 CFR parts 37 and 38;

- 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-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;
- 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);

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).

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

g. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

h. The following applies to concession agreements, management contracts, or subcontracts, purchase or lease agreements, or other agreements covered by 49 C.F.R. part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions:

1. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. part 23.
2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

I. The following applies to "covered organizations" as that term is defined in 14 C.F.R. part 152, subpart E, Nondiscrimination in Airport Aid Program:

1. The contractor assures the City that the contractor will undertake an affirmative action program, as required by 14 C.F.R. part 152, subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. part 152, subpart E, or from participating in or receiving the services or benefits of any program or activity covered by subpart E.
2. The contractor agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. part 152, subpart E, as part of the affirmative action program, and by any federal, state, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. The contractor agrees that State or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR part 152, subpart E, only when they fully meet the standards set forth in 14 CFR 152.409.

j. The contractor assures the City that the contractor will require the foregoing assurances from its suborganizations, as required by 14 C.F.R. part 152, subpart E, to the same effect.

22. **Notice:** The City may revoke this Revocable License at any time and for any reason by issuing written notice to Licensee. Any notices required under this Revocable License shall be sent to the parties by United States Mail, return receipt requested, to the persons and addresses below.

For the City:

City of Colorado Springs  
30 S. Nevada Avenue, Suite 604



Colorado Springs, CO 80903  
Attn: Troy Stover, Business Park Development  
Director  
Email: [Troy.Stover@ColoradoSprings.gov](mailto:Troy.Stover@ColoradoSprings.gov)

And  
Office of the City Attorney  
30 South Nevada Avenue, Suite 501  
Colorado Springs, Colorado 80901  
Attn: David Andrews  
E-mail: [David.Andrews@ColoradoSprings.gov](mailto:David.Andrews@ColoradoSprings.gov)

For the Licensee:  
Peak Innovation, LLC  
1125 17th Street, Suite 800  
Denver, Colorado 80202  
Attn: Mike Orr  
Email: [morr@suncappg.com](mailto:morr@suncappg.com)

And  
Peak Innovation, LLC  
6106 Carnegie Boulevard, Suite 180  
Charlotte, North Carolina 28209  
Attn: Jason Bria, Esq.  
Email: [jbria@suncappg.com](mailto:jbria@suncappg.com)

with copy to:  
Otten Johnson Robinson Neff & Ragonetti PC  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attn: Jed Sonnenshein  
Email: [jsonnenshein@ottenjohnson.com](mailto:jsonnenshein@ottenjohnson.com)

23. **Entire Agreement:** This Revocable License represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing signed by the City and Licensee.

24. **Original Condition:** Upon termination or revocation of this Revocable License, Licensee shall return the Licensed Premises to a condition substantially similar to its original condition, excluding reasonable wear and tear.

25. **Recording the License:** The City reserves the right to record this Revocable License with the El Paso county Clerk and Recorder's Office.

26. **Counterpart Signatures:** This Revocable License may be signed in counterparts, each of which is deemed an original, but which together shall constitute one and the same instrument. If this Revocable License is signed in counterparts, no signatory is bound until all of

the parties named below have duly signed or caused to be duly signed a counterpart of this Revocable License. A signature on a copy of this Revocable License received by any party by facsimile or electronic mail is binding upon the other party as an original. Each party acknowledges that a photocopy of such facsimile or electronic copy may also be treated by the parties as a duplicate original.

27. **Notice and Cure:** In the event of any breach or default under any obligation hereunder by either party or one of its contractors, the defaulting party (or contractor) shall have a period of thirty (30) days from receipt of written notice of such default or breach from the non-defaulting party to cure such default or breach. If the defaulting party cannot cure such default or breach within such thirty (30)-day period then the defaulting party (or contractor) shall have up to sixty (60) days total from receipt of the written notice of default to cure any default or breach provided the defaulting party (or contractor) is using commercially reasonable efforts to do so.

***[Remainder of page intentionally left blank. Signature pages follow]***

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the respective date below.

**PEAK INNOVATION, LLC,**  
a Delaware limited liability company

By: Peak Innovation Investments, LLC,  
a Delaware limited liability company  
Its: Manager

By: **[Exhibit Only-Do not sign]**

Date: June \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jason K. Bria  
Its: Authorized Signatory

**City of Colorado Springs, a home rule city and Colorado municipal corporation by its enterprise, the Colorado Springs Municipal Airport**

**[Exhibit Only-Do not sign]**

By: \_\_\_\_\_  
Troy Stover  
Business Park Development Director

Date: June \_\_\_\_\_, 2023.

Attest: \_\_\_\_\_  
\_\_\_\_\_

Approved to Form:

By: \_\_\_\_\_  
David Andrews  
Office of the City Attorney

**EXHIBIT A**

**To REVOCABLE LICENSE FOR USE OF CITY PROPERTY**

**Licensed Premises**

Lots 3, 4 and 5, Colorado Springs Airport Filing No. 1F plat recorded on September 20, 2022, and recorded at Reception Number 222715016 in the Clerk and Recorder's Office of El Paso County, Colorado.

**EXHIBIT B**

**To REVOCABLE LICENSE FOR USE OF CITY PROPERTY**

**Access Depiction**

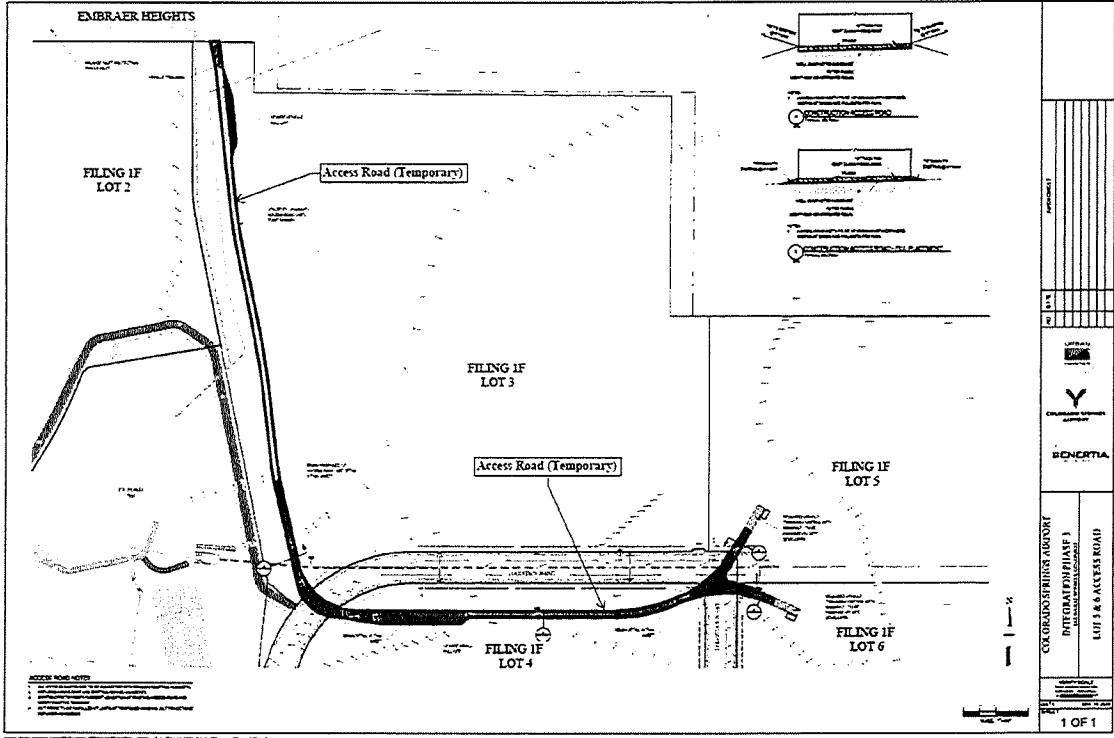
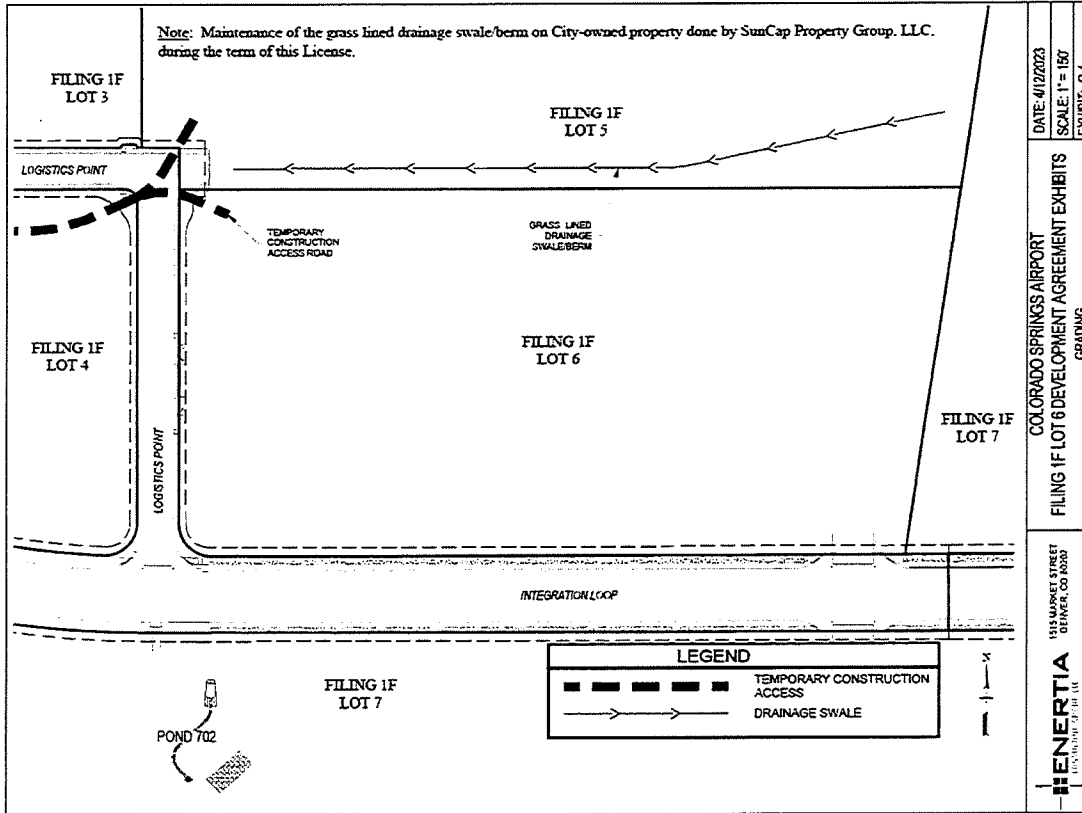


EXHIBIT B



DATE: 4/12/2023  
 SCALE: 1" = 100'  
 EXHIBIT: G-1

COLORADO SPRINGS AIRPORT  
 FILING 1F LOT 6 DEVELOPMENT AGREEMENT EXHIBITS  
 GRADING

1515 SUMMIT STREET  
 DENVER, CO 80202

**ENERGIA**  
 CIVIL ENGINEERS, P.C.

## EXHIBIT I

### FORM OF ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (the “**Agreement**”) is dated \_\_\_\_\_, 2023 (the “**Effective Date**”), and is entered into by and among the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation (“**City**”), by and through its enterprise, the Colorado Springs Municipal Airport (“**Airport**”) (the City and Airport are collectively referred to herein as “**COS**”), and PEAK INNOVATION, LLC, a Delaware limited liability company (“**Peak Innovation**”). City and Peak Innovation are sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties.**” Land Title Guarantee Company (the “**Title Company**”) has joined and executed this Agreement for purposes of acknowledging and agreeing to certain terms and conditions contained in the Agreement.

#### RECITALS:

A. The Airport owns certain real property designated as a mixed use business park located in El Paso County, Colorado, commonly known as “Peak Innovation Park” (hereinafter referred to as the “**Project**” or “**Peak Innovation Park**”).

B. Pursuant to the terms of that certain Development Agreement dated concurrently herewith, between COS and Peak Innovation (the “**Development Agreement**”), a copy of which is attached hereto as **Schedule 1** and incorporated herein by reference, certain infrastructure improvements and other development tasks are required to be constructed and performed in the Peak Innovation Park following the Closing of the Purchase.

C. Pursuant to the Development Agreement, the Parties have agreed that the Airport will deposit with the Title Company certain funds for the costs related to the completion of the work contemplated by the Development Agreement. The Parties desire to enter into this Agreement to set forth the terms and conditions for the maintenance and disposition of such funds.

#### AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

##### **Section 1 Incorporation of Recitals.**

1.1 The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference.

##### **Section 2 Definitions**

2.1 Any capitalized term used but not otherwise defined in this Agreement shall have the meaning given such term in the Development Agreement.

##### **Section 3 Funding of Payment Costs**



3.1 **Funding of Costs.** Concurrently upon mutual execution of this Agreement by the Parties:

3.1.1 The Airport shall deposit or shall cause to be deposited with the Title Company a total amount equal to Four Million Three Hundred Twenty Four Thousand Nine Hundred Fifty Four and No/100 Dollars (\$4,324,954.00), which such amount is the estimated total Costs for that portion of the Airport Work to be completed through August 1, 2023 (the “**Initial Airport Funds**”). The Initial Airport Funds shall be held by the Title Company in a separate interest-bearing escrow account (the “**Funds Escrow**”) and shall be maintained by the Title Company pursuant to the terms of this Agreement. In order to deposit said funds into an interest-bearing account, it will be necessary for the relevant Parties to provide Title Company with W-9 Forms. If the required W-9 Forms are not received, Title Company will deposit the funds in a noninterest bearing account. The Initial Airport Funds shall be maintained in the Funds Escrow until (a) ten (10) business days after (1) the Airport has received City Council Approval for the Final Approved IGA and the Set Aside Agreement and the Airport has delivered written notice to the Title Company and Peak Innovation confirming the same (the “**Notice of Approval**”), and (2) the Set Aside Requirements (as defined in the Development Agreement) are satisfied; or, (b) all of such funds are disbursed in accordance with the terms of this Agreement.

(b) Notwithstanding the provisions set forth in Section 3.1.1, if the Airport does not obtain City Council Approval on or before August 1, 2023, the Initial Airport Funds shall remain maintained by the Title Company in the Funds Escrow in accordance with the terms of this Agreement and the Airport shall be required to make a second deposit of immediately available funds in the total amount of Nine Million Seven Hundred Fifty Thousand Seven Hundred Twenty Seven and No/100 Dollars (\$9,750,727.00), which such amount is the estimated Costs to Complete the remaining portion of the Airport Work (the “**Remaining Airport Funds**”). The Initial Airport Funds and the Remaining Airport Funds shall be maintained by the Title Company pursuant to this Agreement until the earlier of: (i) the final disbursement of all amounts in the Funds Escrow, or (ii) the Termination Date (as defined in Section 3.4(b)). The amount of Initial Airport Funds and Remaining Airport Funds in the Funds Escrow shall be adjusted from time to time as set forth in Section 4.3 of the Development Agreement.

3.2 **Disbursement Requests.** All disbursements from the Funds Escrow to fund the Costs associated with the Airport Work (each, a “**Disbursement Request**”), must be made pursuant to the following disbursement procedures:

3.2.1 Each Disbursement Request must (i) include the written confirmation of Completion as required in the Development Agreement; (ii) set forth the amount of the draw request and the wiring instructions for the disbursement; (iii) be accompanied by an AIA form 703 (or similar form); (iv) include billings and such other documentation supporting the request of the amount to be disbursed; and (v) be accompanied by copies of conditional lien waivers for the amounts to be paid, and to the extent not previously provided, unconditional lien waivers from all service providers paid from any Disbursement Requests dated 60 days or earlier than the pending Disbursement Request.

3.2.2 Any Party requesting a disbursement shall provide a copy of each Disbursement Request to the Title Company and the other non-requesting Party, and the non-requesting Party shall have seven (7) business days (the “**Objection Period**”) to

provide a written objection to any Disbursement Request. In the event no written objection is received within the Objection Period, the Party seeking the disbursement shall be entitled, within two (2) business days thereafter, to a remittance from the applicable Escrow Account of the amount stated in such Disbursement Request for payment of the requested Costs. If any Party objects in writing to a Disbursement Request within the Objection Period, the Parties shall work together in good faith to resolve such disagreement as expeditiously as possible.

**3.3 Method of Disbursement.** Any disbursement made by the Title Company pursuant to this Agreement shall be disbursed at the requesting Party's option (i) directly to the requesting Party, (ii) jointly to the requesting Party and its general contractor, (iii) directly to persons supplying labor, materials and services in connection with amounts being requested, or (iv) jointly to the requesting Party and such persons. The Title Company shall have no obligation to see that disbursements made by it hereunder are actually used by that Party to pay for labor and materials furnished for applicable work. The requesting Party acknowledges that this is its responsibility, and assumes all risks in connection therewith.

**3.4 Disposition of Escrow Funds; Termination of Escrow.** (a) For so long as funds remain in the Funds Escrow and provided Peak Innovation has not delivered an Assumption Notice pursuant to the terms of the Development Agreement, the Airport may elect in its sole discretion to request disbursements from the Funds Escrow to fund the Costs associated with Airport Work. Only following Peak Innovation's delivery of an Assumption Notice pursuant to the terms of the Development Agreement may Peak Innovation be permitted to request disbursements from the Funds Escrow in strict accordance with the terms and conditions of this Agreement. If at the time of Peak Innovation's delivery of the Assumption Notice the Airport has not obtained City Council Approval and satisfied the Set Aside Agreement Requirements, Peak Innovation shall have the right to be reimbursed from the Funds Escrow for its actual out-of-pocket costs incurred in assuming and completing the construction of the Airport Work pursuant to the terms of the Development Agreement, provided that such costs are contemplated in the Final Budget and the request for reimbursement must be made in accordance with the disbursement procedures set forth in this Agreement. If at the time of Peak Innovation's delivery of the Assumption Notice or any time thereafter, the Airport has obtained City Council Approval and satisfied the Set Aside Agreement Requirements, in lieu of disbursements from the Funds Escrow, Peak Innovation's sole right to reimbursement shall be pursuant to the terms of the Set Aside Agreement.

(b) Notwithstanding anything to the contrary contained herein, within ten (10) business days following the Airport's delivery of the Notice of Approval to Peak Innovation and the Title Company (the "**Termination Date**"), (i) the Title Company shall distribute to the Airport all funds being maintained in the Funds Escrow and the Funds Escrow shall automatically terminate, and (ii) each of Peak Innovation and the Airport shall execute and deliver (and the Airport shall cause the District to execute and deliver) to each other each respective party's counterpart original of the Set Aside Agreement.

**3.5 Dispute Resolution.** If any dispute arises between the Parties relating to this Agreement, the Parties shall follow the mediation procedures set forth in the Development Agreement.

## Section 4

## **Title Company**

4.1 **No Liability to Title Company.** The Parties acknowledge and agree that (i) the Title Company, as the custodial holder of the Escrow Account, is acting at the request of the Parties for their convenience, (ii) the Title Company shall not be liable for any act or omission on its part under this Agreement unless taken or suffered in bad faith or involving gross negligence or willful misconduct, and (iii) should any dispute arise with respect to this Agreement, the Title Company may initiate an action in interpleader and may deposit amounts on deposit in the Escrow Account with a court of appropriate jurisdiction. In the alternative, in the event of a dispute with respect to this Agreement, Title Company may continue holding amounts on deposit and refuse to act under the terms of this Agreement until such dispute has been resolved between the Parties and the Parties deliver written notice of the resolution to Title Company, or until such dispute is adjudicated and Title Company has been provided with a final non-appealable order or judgment setting forth how the amounts on deposit are to be disbursed.

4.2 **Title Company Fees.** The Title Company shall receive, as compensation for its basic services under this Agreement, the sum of \$350.00. The fee charged by the Title Company for its services hereunder as described above shall be paid from the Funds Escrow.

4.3 **Title Company Obligations.** The obligations of the Title Company are limited solely to maintain the Escrow Account and making the disbursements required by it under this Agreement.

4.4 **Indemnity of Title Company.** The Parties, but only to the extent permitted under Colorado law, agree to indemnify Title Company, and hold it harmless, against any and all liability incurred by Title Company by reason of this Agreement, or in connection with Title Company's performance of its duties hereunder, except for Title Company's own gross negligence, willful misconduct, or losses resulting from any financial institution holding the Funds Escrow, and to reimburse Title Company for all its expenses, including, but not limited to, attorneys' fees and court costs incurred pursuant to this Agreement.

4.5 **Resignation of Title Company.** Title Company may resign under this Agreement by giving written notice to the Parties, effective 30 days after the date of the notice. Upon the appointment by the Parties of a new escrow holder to custodian, or upon written instructions to Title Company for some other disposition of the amounts on deposit, Title Company shall deliver the amounts on deposit as so directed.

## **Section 5 Notices**

5.1 **Notices.** All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, and delivered personally by e-mail transmission or sent by nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS) for next-day or next-business-day delivery, to the address of the intended recipient at its address as set forth below, or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner.

To Peak Innovation: Peak Innovation, LLC  
1125 17th Street, Suite 800  
Denver, Colorado 80202  
Attn: Mike Orr  
Email: [morr@suncappg.com](mailto:morr@suncappg.com)

And

Peak Innovation, LLC  
6106 Carnegie Boulevard, Suite 180  
Charlotte, North Carolina 28209  
Attn: Jason Bria, Esq.  
Email: [jbria@suncappg.com](mailto:jbria@suncappg.com)

with copy to:

Otten Johnson Robinson Neff & Ragonetti PC  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attn: Jed Sonnenshein  
Email: [jsonnenshein@ottenjohnson.com](mailto:jsonnenshein@ottenjohnson.com)

To COS : City of Colorado Springs  
30 S. Nevada Avenue, Suite 604  
Colorado Springs, Colorado 80903  
Attn: Troy Stover  
E-mail: [Troy.Stover@coloradosprings.gov](mailto: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](mailto:David.Andrews@coloradosprings.gov)

To Title Company: Land Title Guarantee Company  
3033 E. 1<sup>st</sup> Avenue, Suite 600  
Denver, Colorado 80206  
Attn: Tom Blake  
Email: [tblake@ltgc.com](mailto:tblake@ltgc.com)

Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, upon delivery of e-mail transmission during normal business hours (Monday through Friday, 8:30 a.m.– 5:00 p.m. Colorado time), or on the next business day following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above.

## Section 6

## General Terms and Conditions

6.1 **Further Acts.** Each Party shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. The Parties shall reasonably cooperate with each other as is reasonably necessary to complete each Party's construction obligations hereunder.

6.2 **Entire Agreement.** This Agreement, and the Development Agreement attached hereto, constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No change or addition is to be made to this Agreement except by written amendment executed by the Parties and the Title Company.

6.3 **Evenhanded Construction.** Preparation of the Agreement has been a joint effort of the Parties. The terms and conditions in this Agreement have been arrived at after mutual negotiation and the opportunity to consult with counsel, and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. It is also the Parties' intention that the terms and conditions not be construed against any Party merely because it was prepared by one of the Parties.

6.4 **Non-Waiver of Rights.** No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Parties, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

6.5 **Governing Law.** This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the City Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

6.6 **Governmental Immunity Act.** Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

6.7 **No Damages.** Neither Party shall be liable for any lost profits, special, incidental, punitive, exemplary, or consequential damages, including, but not limited to loss of economic or business expectations, loss of profits, loss of capital, cost of substitute products, facilities, services, or down time costs.

6.8 **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

6.9 **Successors and Assigns.** No Party may assign, encumber or pledge its interest in this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and any attempted assignment, encumbrance or pledge in violation of this provision shall be null and void and of no force or effect.

6.10 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

6.11 **Descriptive Headings.** The descriptive headings of the several paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

6.12 **No Partnership; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties hereto. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

6.13 **Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

6.14 **Computation of Periods.** All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday.

6.15 **Rules of Construction.** All references herein to the singular shall include the plural, and vice versa.

6.16 **No Recording.** Neither this Agreement nor any memorandum hereof shall be recorded in the real estate records of the county in which the Property is located. Any such recording shall be void and shall constitute a material default hereunder by the Party that causes such recordation.

**[Remainder of page left intentionally blank; signatures on following pages]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COS:

City of Colorado Springs, a home rule city and Colorado municipal corporation by its enterprise, the Colorado Springs Municipal Airport

[Exhibit Only—Do not sign]

By: \_\_\_\_\_  
Yemi Mobolade  
Mayor

ATTEST: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Troy Stover  
Business Park Development Director

Approved to Form:

By: \_\_\_\_\_  
David Andrews  
Office of the City Attorney

STATE OF COLORADO    )  
  )    ss.  
COUNTY OF El Paso)

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2023, by \_\_\_\_\_ for the City of Colorado Springs, a home rule city and Colorado municipal corporation by its enterprise, the Colorado Springs Municipal Airport, for and on behalf of said corporation.

Witness my hand and official seal.  
My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**PEAK INNOVATION:**

**PEAK INNOVATION, LLC,**  
a Delaware limited liability company

By: Peak Innovation Investments, LLC,  
a Delaware limited liability company

Its: Manager

By: **[Exhibit Only-Do not sign]**

\_\_\_\_\_  
Jason K. Bria

Its: Authorized Signatory

STATE OF COLORADO    )  
  )    ss.  
COUNTY OF El Paso)

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2023, by Jason K. Bria, Authorized Signatory of Peak Innovation Investments, LLC, a Delaware limited liability company, the Manager of Peak Innovation, LLC, a Delaware limited liability company, for and on behalf of said company.

Witness my hand and official seal.  
My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**TITLE COMPANY:**

The undersigned confirms, acknowledges and agrees, on behalf of Land Title Guarantee Company, to the terms and conditions contained in this Agreement, including without limitation, the Title Company's obligations and responsibilities set forth in Sections 3 and 4 of this Agreement.

**LAND TITLE GUARANTEE COMPANY**

**[Exhibit Only-Do not sign]**

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF COLORADO    )  
  )    ss.  
COUNTY OF El Paso)

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ for Land Title Guarantee Company, for and on behalf of said company.

Witness my hand and official seal.  
My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**SCHEDULE 1**  
**To Escrow Agreement**  
**Development Agreement**

**To be attached.**