

## ADDITIONAL PROJECT IMPROVEMENTS REIMBURSEMENT AGREEMENT

This ADDITIONAL PROJECT IMPROVEMENTS REIMBURSEMENT AGREEMENT (the “**Agreement**”), is made and entered into and dated as of \_\_\_\_\_, 2015 by and among the City and County of Denver, on behalf of the Department of Aviation (the “**City**”) and AVIATION STATION NORTH METROPOLITAN DISTRICT NO. 1 (the “**District**”), referred to herein individually as a “**Party**” and collectively, as the “**Parties.**”

*As used in this Agreement, the capitalized term “City” refers solely to the City and County of Denver, on behalf of the Department of Aviation and the capitalized term “City and County of Denver” refers to the City and County of Denver as a whole and includes any department of the City and County of Denver. The financial participation of the City provided in this Agreement shall derive solely from enterprise funds controlled by the Department of Aviation of the City and County of Denver and not from the General Fund or any other funds of the City and County of Denver.*

### BACKGROUND

A. Capitalized terms used and not defined in this Background section shall have the meaning given to them in Article I hereof.

B. The District is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing as a metropolitan district under the constitution and laws of the State of Colorado.

C. The formation of the District was approved by the City Council in conjunction with the approval of its Service Plans. The District was organized with the approval of its electors. The Service Plan has been prepared for the District pursuant to Sections 32-1-201 *et seq.*, C.R.S., as amended and all required governmental approvals have been obtained therefor.

D. The District, together with the Financing Districts (collectively, the “**Districts**”), were formed for the purpose of designing, constructing, acquiring, financing and operating and maintaining certain public infrastructure and provision of certain services within and without a mixed use development to be known as Pena Station (the “**Development**”), which contains approximately three hundred eighty four (384) acres (the “**Development Area**”).

E. The Development Area is within the area which the Districts are authorized to serve pursuant to their respective service plans approved by the City and County of Denver.

F. In connection with the development of the first phase of the Development Area, it has been determined that certain Additional Project Improvements need to be installed that will benefit the Districts and the residents, property owners, and taxpayers thereof.

G. The City and County of Denver and Rail Stop LLC entered into the Development Agreement and the City and County of Denver and the District entered into the Pena Station IGA, which collectively set forth the responsibilities of the parties thereto with respect to the design, construction and installation of certain Additional Project Improvements, and provide for an allocation of funding responsibilities among the parties thereto with respect to such Additional Project Improvements.

H. The District currently does not have sufficient funds to fund in full its portion of the initial costs of the Additional Project Improvements and pursuant to the Development Agreement and Pena Station IGA, the City agreed to use airport revenues to fund a portion of the Additional Project Improvements costs allocated to the District in the amount of \$3,000,000 and pursuant to the Pena Station IGA, the District agreed to enter into this Agreement to provide for the repayment to the City of such amount (as more particularly defined herein, the “**Reimbursement Obligation**”).

I. The District has determined and hereby determines that the Additional Project Improvements are generally contemplated by the Service Plan, are needed and, due to the nature of the Additional Project Improvements and proximity and interrelatedness of the development anticipated to occur within the Development Area, will benefit District’s residents, property owners and taxpayers.

J. The Parties wish to enter into this Agreement to set forth the terms of the payment of the Reimbursement Obligation by the District.

K. Currently, the property within the Development Area has not been included in any of the Districts and, accordingly, the District and the Financing Districts have a minimal or no assessed valuation of taxable property within their respective boundaries.

L. On or prior to the Closing Date, the District will enter into the Aviation Station Inclusion Agreement with Rail Stop LLC pursuant to which Rail Stop LLC will agree that upon the satisfaction of certain conditions precedent, it will include a portion of property that it owns into one or more of the Financing Districts.

M. At elections of the qualified electors of the District duly called for and held on November 5, 2013 (the “**Election**”), in accordance with law and pursuant to due notice, a majority of eligible electors who voted at the Election of the District voted in favor of the issuance of general obligation indebtedness and the imposition of taxes for the payment thereof, for the purpose of funding certain improvements and facilities as follows:

<b>Authorization</b>	
<b><u>Purpose</u></b>	<b><u>Amount</u></b>
Street	\$500,000,000
Parks and Recreation	500,000,000
Water	500,000,000
Sanitation	500,000,000
Transportation	500,000,000
Mosquito Control	500,000,000
Safety Protection	500,000,000
Fire Protection	500,000,000
Television Relay and Translation	500,000,000
Operating & Maintenance Expenses	500,000,000
IGA Debt	500,000,000
Refunding	500,000,000
<b>TOTAL</b>	<b>\$6,000,000,000*</b>

\* Pursuant to the Districts' Service Plans, the total debt permitted to be issued by all Districts and certain Smith Metropolitan Districts Nos. 1-4 is limited to \$500,000,000.

N. The District will allocate to its Election all of the indebtedness represented by this Agreement, based upon the principal amount of the Reimbursement Obligation, as follows:

<b>Allocation of Electoral Authorization</b>		
<b><u>Purpose</u></b>	<b><u>District Allocation</u></b>	<b><u>Remaining Electoral Authorization</u></b>
Street		\$500,000,000
Parks and Recreation		500,000,000
Water		500,000,000
Sanitation	\$3,000,000	497,000,000
Transportation		500,000,000
Mosquito Control		500,000,000
Safety Protection		500,000,000
Fire Protection		500,000,000
Television Relay and Translation		500,000,000
Operating & Maintenance Expenses		500,000,000
IGA Debt		500,000,000
Refunding		500,000,000
<b>TOTAL</b>	<b>\$3,000,000</b>	<b>\$5,997,000,000</b>

O. The Reimbursement Obligation shall be issued in denominations of not less than \$500,000, and in integral multiples above \$500,000 of not less than \$1,000 each, and, therefore, will be exempt from registration under the Colorado Municipal Bond Supervision Act.

P. The District hereby determines that the execution of this Agreement, the provision of the Additional Project Improvements and the pledge of the Pledged Revenue to the City to repay the Reimbursement Obligation are in the best interests of the District and the residents, property owners and taxpayers of the District.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants and stipulations herein, the Parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATION**

Unless otherwise defined herein or the context requires otherwise, capitalized terms used in this Agreement shall have the following meanings. These definitions shall be equally applicable to both the singular and the plural forms of the terms so defined.

1.1 **Definitions.** Unless otherwise defined herein or the context requires otherwise, capitalized terms used in this Agreement shall have the following meanings. These definitions shall be equally applicable to both the singular and the plural forms of the terms so defined.

**“Additional Project Improvements”** means certain water quality and water quantity improvements to Blue Grama Gulch and appurtenant improvements constructed and anticipated to be constructed in the Development Area pursuant to the Pena Station IGA and the Development Agreement, the debt for which was approved at the Election.

**“Agreement”** means this Additional Project Improvements Reimbursement Agreement and any amendment hereto made in accordance herewith.

**“Authorized Denominations”** means \$500,000 and any integral multiple of \$1,000 in excess thereof.

**“Authorizing Resolutions”** means the resolutions adopted by the Board of the District which authorizes the execution and delivery of this Agreement by the District.

**“Aviation Station Mill Levy Three”** means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed upon all taxable property of the District (in accordance with Section 3.1(a) hereof) and upon all taxable property of each Financing District (in accordance with the related Pledge Agreement), in each case in an amount of three (3) mills (without adjustment for changes in law); provided, however, that in no event may the Aviation Station Mill Levy Three be established at a mill levy which would cause the District or the Financing District, as the case may be, to derive tax revenue in any year in excess of the maximum tax increases permitted by the District's or the Financing District's electoral authorization, as applicable, and if the Aviation Station Mill Levy Three as calculated pursuant to the foregoing would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by such District's electoral authorization, the Aviation Station Mill Levy Three shall be reduced to the point that such maximum tax increase is not exceeded.

**“Aviation Station/Smith IGA”** means the Intergovernmental Agreement Regarding Pena Station Improvements dated on or prior to the Closing Date between the District and Smith Metropolitan District No. 1, as it may be amended or supplemented from time to time.

**“Board” or “Boards”** shall mean the lawfully organized Boards of Directors of the Districts.

**“City”** means the City and County of Denver, on behalf of the Department of Aviation.

**“City Council”** means the City Council of the City and County of Denver.

**“Closing Date”** means the date on which the opinion of Ballard Spahr, LLP relating to the validity and enforceability of the District's obligations under this Agreement has been delivered to the City.

**“Development”** has the meaning given to it in the Background Section D.

**“Development Agreement”** means the Development Agreement between the City and County of Denver and Rail Stop LLC dated on or prior to the Closing Date, as it may be amended or supplemented from time to time.

**“Development Area”** has the meaning given to it in Background Section D.

**“Department of Aviation”** means the Department of Aviation of the City and County of Denver.

**“District”** means Aviation Station North Metropolitan District No. 1, including any duly authorized representative, officer, director, employee, agent, engineer or attorney of the District, if applicable.

**“District No. 2”** means Aviation Station North Metropolitan District No. 2, including any duly authorized representative, officer, director, employee, agent, engineer or attorney of District No. 2, if applicable.

**“District No. 2 Pledge Agreement”** means the Capital Pledge Agreement dated as of the date hereof between the District and District No. 2, as it may be amended or supplemented from time to time.

**“Districts”** shall mean, collectively, the District and the Financing Districts, including any duly authorized representative, officer, director, employee, agent, engineer or attorney of any District, if applicable.

**“Districts Documents”** means this Agreement, the Inclusion Agreements, and the Pledge Agreements.

**“Election”** has the meaning given to it in Background Section N.

**“Electronic Means”** shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

**“Financing Districts”** means District No. 2 and, if it becomes a party to a Pledge Agreement, Aviation Station North Metropolitan District No. 3, including any duly authorized representative, officer, director, employee, agent, engineer or attorney of any Financing District, if applicable.

**“Inclusion Agreement”** means an Inclusion Agreement between the District and Rail Stop LLC dated on or prior to the Closing Date, as it may be amended or supplemented from time to time.

**“Interest Payment Date”** means each June 1 and December 1, commencing on June 1, 2016, and the Maturity Date.

**“Maturity Date”** means June 1, 2055.

“**Pena Station IGA**” means the Intergovernmental Agreement Regarding Pena Station Improvements dated the date hereof between the District and the City and County of Denver, as it may be amended or supplemented from time to time.

“**Pledge Agreements**” means, collectively, (i) the District No. 2 Pledge Agreement and (ii) any other Capital Pledge Agreement entered into from time to time by the District and one or more Financing District in substantially the form of the District No. 2 Pledge Agreement.

“**Pledged Revenues**” means (i) amounts generated from the imposition of the Aviation Station Mill Levy Three, less any collection costs, (ii) amounts received by the District pursuant to any Pledge Agreement and (iii) any other legally available amounts that the District may designate by resolution of its Board, from time to time, to be pledged to the repayment of the Reimbursement Obligation hereunder.

“**Reimbursement Obligation**” means the obligation of the District to repay the principal amount of \$3,000,000 plus interest thereon in accordance with the terms hereof, but solely from and to the extent of the Pledged Revenues.

“**Service Plans**” shall mean the respective Service Plans for the Districts, as approved by the City Council, as the same may be amended from time to time.

“**State**” shall mean the State of Colorado.

“**Supplemental Act**” shall mean the Supplemental Public Securities Act, Sections 11-57-201, *et seq.*, C.R.S., as the same may be amended from time to time.

“**Termination Date**” means, subject to Section 2.2(e)(2) hereof, (i) the date on which the aggregate amount of all payments of principal and interest paid by the District hereunder equals the Total Repayment Amount or (ii) the date on which the principal amount and all accrued and unpaid interest on the Reimbursement Obligation is paid in full, whichever date occurs first.

“**Total Repayment Amount**” means \$6,000,000.

1.2 **Interpretation.** The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the term “heretofore” means before the date of execution of the Agreement; and the term “hereafter” means after the date of execution of this Agreement.

All definitions, terms, and words shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth in Section 1.1 hereof.

Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

The captions or headings of this Agreement are for convenience only, and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement.

All schedules, exhibits, and addenda referred to herein are incorporated herein by this reference.

## ARTICLE II

### REIMBURSEMENT OBLIGATION

2.1 **No Additional Electoral Approval Required.** The authorization for issuance of debt, fiscal year spending, revenue collections and other constitutional matters requiring voter approval for purposes of this Agreement, was approved at the Election held in accordance with law and pursuant to due notice. The performance of the terms of this Agreement requires no further electoral approval.

2.2 **Terms of the Reimbursement Obligation; Repayment Terms.**

(a) The City hereby agrees to use airport revenues to fund a portion of the District's share of the costs of the Additional Project Improvements in the amount of \$3,000,000 by making available such funds to the District as provided in more detail in the Development Agreement and Pena Station IGA, and the District hereby covenants and agrees to repay this amount to the City by incurring the Reimbursement Obligation to the City pursuant to this Agreement.

(b) The outstanding principal amount of the Reimbursement Obligation shall bear interest at the annual rate of 5% computed on the basis of a 360-day year of twelve 30-day months. Interest on the Reimbursement Obligation shall be payable on each Interest Payment Date, commencing on June 1, 2016. Such interest shall compound semiannually on each Interest Payment Date at the rate borne by the Reimbursement Obligation.

(c) Principal on the Reimbursement Obligation shall be payable on each December 1 and on the Maturity Date pursuant to the following provisions. On each December 1 and on the Maturity Date, the District shall determine the amount of Pledged Revenue on deposit with the District and, to the extent such amount is in excess of the amounts required to pay interest on the Reimbursement Obligation due on such December 1 or the Maturity Date (including current interest, accrued but unpaid interest, if any, and compounded interest, if any), as applicable, the District shall pay on such December 1 and on the Maturity Date, as applicable, as much of the outstanding principal amount of the Reimbursement Obligation as can be paid with such excess moneys.

(d) Subject to the provisions of Section 2.2(e) hereof, if the principal amount and all accrued and unpaid interest on the Reimbursement Obligation is not paid in full on the Maturity Date, the Reimbursement Obligation shall remain outstanding until paid.

(e) Notwithstanding the foregoing or anything else herein to the contrary:

(1) the Reimbursement Obligation shall be deemed to be paid in full and discharged and no longer outstanding on the date when the aggregate amount of all payments of principal and interest paid by the District hereunder equals the Total Repayment Amount; and

(2) the District shall not be obligated to pay more than the amount permitted by law, the Service Plan and its electoral authorization in payment of the Reimbursement Obligation, including all payments of principal and interest, and the Reimbursement Obligation will be deemed to be paid in full and discharged and no longer outstanding upon the payment by the District of such amount.

(f) In addition to annual principal payment pursuant to Section 2.2(c) hereof, the District may prepay the Reimbursement Obligation at any time, in whole or in part, without premium, by paying all or a portion of the outstanding principal amount plus interest accrued to the date of prepayment (including accrued and unpaid interest and compounded interest, if any), provided that if following such prepayment, the principal amount of the remaining portion of the Reimbursement Obligation would be less than \$500,000, such portion of the Reimbursement Obligation may remain outstanding in the largest possible denomination of less than \$500,000, in integral multiples of not less than \$1,000 each of any integral multiple thereof. The District shall provide a prior 10-day written notice to the City of such prepayment stating the principal amount being prepaid and the date of prepayment, provided that no such notice need to be provided in connection with the payment of principal of the Reimbursement Obligation pursuant to Section 2.2(c) hereof.

(g) All payments of principal of and interest on the Reimbursement Obligation shall be payable in lawful money of the United States of America by check or draft of the District mailed on or before the payment date to the City. The District may make payments of principal and interest by such alternative means as may be mutually agreed to between the Parties. All payments of principal and interest hereunder shall be reflected by the District on the payment schedule attached as Exhibit A to this Agreement. Records of the District with respect to the payments made on the Reimbursement Obligation shall be binding on both Parties absent manifest error. The District shall be entitled to rely on its records for purposes of determining the Termination Date.

### ARTICLE III

#### PLEDGED REVENUES

##### 3.1 Imposition of Aviation Station Mill Levy Three.

(a) In order to pay the Reimbursement Obligation, the District agrees to levy on all of its taxable property, in addition to all other taxes, direct annual taxes in the amount of the Aviation Station Mill Levy Three, commencing in 2015, and in each year thereafter so long as the Reimbursement Obligation remain outstanding. Nothing herein shall be construed to require the District to impose (or require any Financing District to impose) an ad valorem property tax levy for the payment of the Reimbursement Obligation (i) in excess of the Aviation Station Mill Levy Three, (ii) after the Termination Date or (iii) after the Reimbursement Obligation has been deemed to be paid in full and discharged pursuant to the provisions of Section 2.2(e)(2).

(b) The foregoing provisions of this Section 3.1 are hereby declared to be the certificate of the Board of the District to the City Council, showing the aggregate amount of taxes to be levied from time to time, as required by law, for the purpose of paying the principal of, and the interest on, the Reimbursement Obligation.



(c) The amounts necessary to pay the principal of, and interest on, the Reimbursement Obligation when due are hereby appropriated for said purposes, and such amounts as appropriate for each year shall also be included in the annual budget and the appropriation bills to be adopted and passed by the Board of the District in each year until the Reimbursement Obligation has been fully paid, satisfied, and discharged.

(d) In addition, and without limiting the generality of the foregoing, the obligations of the District to transfer funds to the City for each payment described herein shall survive any court determination of the invalidity of this Agreement as a result of a failure, or alleged failure, of any of the directors of the District to properly disclose, pursuant to State law, any potential conflicts of interest related hereto in any way, provided that such disclosure is made on the record of Districts' meetings as set forth in their official minutes.

3.2 **Imposition of Mill Levies by the Financing Districts.** The District shall enter into the Pledge Agreement and shall cause District No. 2 to impose the Aviation Station Mill Levy Three in accordance with the provisions hereof and thereof and remit the revenues generated therefrom to the District for the purpose of paying the Reimbursement Obligation. Upon inclusion of property into an Aviation Station Financing District, the District shall (i) enter into the Pledge Agreement with Aviation Station North Metropolitan District No. 3 in substantially the form of the District No. 2 Pledge Agreement and shall cause such district to impose the Aviation Station Mill Levy Three in accordance with the provisions hereof and on the terms set forth in such Pledge Agreement and (ii) cause such district to remit revenues generated therefrom to the District for the purpose of paying the Reimbursement Obligation.

3.3 **Pledge of Pledged Revenues; Application of the Supplemental Act.**

(a) The Parties hereby agree that this Agreement is a "security" within the meaning of the Supplemental Act. The Reimbursement Obligation shall be a limited tax general obligation of the District payable solely from the Pledged Revenues.

(b) To the fullest extent permitted by law, the District hereby elects to apply all of the provisions of the Supplemental Act to this Agreement, and the Parties acknowledge and consent to such election. Pursuant to Section 11-57-210 of the Supplemental Act, it is hereby recited that this Agreement and the Reimbursement Obligation is incurred pursuant to the Supplemental Act, and such recital shall be conclusive evidence of the validity and the regularity of the execution and delivery of this Agreement after its delivery for value.

(c) The creation, perfection, enforcement, and priority of the pledge of Pledged Revenues to secure or pay the Reimbursement Obligation shall be governed by Section 11-57-208 of the Supplemental Act. The Pledged Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of each such pledge and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the District, except as may be otherwise provided in the Supplemental Act, in the Authorizing Resolutions, or in any other instrument. Pursuant to Section 11-57-208 of the Supplemental Act, the pledges and liens created by this Agreement are subject to any prior pledges and liens, and the District hereby covenants and represents that it has not heretofore created any prior pledge or lien on the Pledged Revenues. The lien of the pledge made herein of the Pledged

Revenues shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such persons have notice of such liens.

## ARTICLE IV

### COVENANTS

4.1 **Future Exclusion of Property.** The Parties agree that the Reimbursement Obligation constitutes “indebtedness” as contemplated by Section 32-1-503 of Colorado Revised Statutes, as amended. Any property excluded from the District after the date hereof is to remain liable for the imposition of the Aviation Station Mill Levy Three and payment of the proceeds thereof in accordance with the provisions hereof, to the same extent as such property otherwise remains liable for the debt of the District, as provided in Section 32-1-503 of Colorado Revised Statutes, as amended, for as long as the District is required to impose the Aviation Station Mill Levy Three hereunder. In the event that any order providing for the exclusion of property from the District does not so provide and specifically indicate the liability of such excluded property for the obligations set forth herein, the District hereby agrees to take all actions necessary to cause the property owners of property proposed to be excluded from its territory to covenant to assume all responsibilities under this Agreement, which covenants shall run with the land and shall be in a form satisfactory to the other Parties hereto.

#### 4.2 **Covenants of the District.**

(a) The District will maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of the Reimbursement Obligation.

(b) Without the prior written consent of the City, the District will not issue or incur any bonds, notes, or other obligations payable in whole or in part from the Aviation Station Mill Levy Three. Nothing herein restricts the ability of the District to issue debt or incur financial obligations payable from any mill levy or other revenues of the District that does not constitute Pledged Revenues hereunder.

(c) Without the prior written consent of the City, the District will not amend or consent to an amendment of any District Document to which it is a party or to the extent consent of the District is required for an amendment if such proposed amendment would have a material adverse effect on the payment of the Reimbursement Obligation.

(d) The District shall keep and maintain, or cause to be kept and maintained, accurate records and accounting entries reflecting all funds received from the imposition of the Aviation Station Mill Levy Three and any Pledged Revenues received from the Financing Districts.

(e) If required by applicable law, at least once a year in the time and manner provided by law, the District will cause an audit to be performed of the records relating to revenues and expenditures of the District.

(f) Upon prior written request to the District, the City and County of Denver and the Department of Aviation shall have a right to inspect books and records of a District at the City's expense for the purpose of verifying compliance with the terms of this Agreement.

4.3 **Covenants of the City.** The City shall keep and maintain or cause to be kept and maintained, accurate records of accounting entries reflecting all payments of principal of, and interest on, the Reimbursement Obligation received from the District. Upon prior written request to the City, the District shall have a right to inspect books and records of the City at the District's expense for the purpose of verifying the amounts of principal of, and interest on, the Reimbursement Obligation received by the City. If such inspection reveals that the City received payments in excess of the Total Payment Amount, the City shall promptly repay to the District any amount in excess of the Total Payment Amount. In the event of any discrepancy between the records of the District and the City with respect to the payments of principal and interest on the Reimbursement Obligation, records of the District shall control absent manifest error.

## ARTICLE V

### **REPRESENTATIONS AND WARRANTIES**

5.1 **Representations and Warranties of the District.** The District hereby makes the following representations and warranties:

(a) The District is a quasi-municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

(b) The District has all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Agreement. The District's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action.

(c) The District is not in violation of any applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the District to perform its obligations hereunder. The execution, delivery and performance by the District of this Agreement (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority, (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the District in a manner that could reasonably be expected to result in a material adverse effect.

(d) The District has obtained all consents and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery, and performance by the District of this Agreement.

(e) There is no action, suit, inquiry, investigation, or proceeding to which the District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the best knowledge of the District threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the District is there any basis therefor, wherein an unfavorable decision, ruling, or finding could

reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the District to perform its obligations under, this Agreement.

(f) This Agreement constitutes the legal, valid, and binding obligation of the District, enforceable against the District in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

## 5.2 Representations and Warranties of the City.

(a) The City and County of Denver is a home rule municipality validly organized under Article XX of the Constitution of the State of Colorado. The City, by and through the Department of Aviation, owns and operates the Denver International Airport as part of its municipal airport system.

(b) The City has all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Agreement. The City's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the City Council of the City.

(c) The City is not in violation of any of applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the City to perform its obligations hereunder. The execution, delivery and performance by the City of this Agreement (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority, (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the City in a manner that could reasonably be expected to result in a material adverse effect.

(d) The City has obtained all consents and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery, and performance by the City of this Agreement.

## ARTICLE VI

### NON-COMPLIANCE AND REMEDIES

6.1 **Events of Non-Compliance.** The occurrence or existence of any one or more of the following events shall be an "Event of Non-Compliance" hereunder, and there shall be no default or Event of Non-Compliance hereunder except as provided in this Section:

(a) the District fails or refuses to impose the Aviation Station Mill Levy Three or to remit the Pledged Revenue as required by the terms of this Agreement;

(b) any Financing District fails or refuses to impose the Aviation Station Mill Levy Three in accordance with the Pledge Agreement to which such Financing District is a party or to remit revenue generated from such mill levy as required by such Pledge Agreement;

(c) any representation or warranty made by any Party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon any other Party;

(d) any Party fails in the performance of any other of its covenants in this Agreement, and such failure continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to any of the Parties hereto;

(e) the District commences proceedings for dissolution or consolidation with another metropolitan district during the term of this Agreement; or

(f) (i) the District shall commence any case, proceeding, or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, or other similar official for itself or for any substantial part of its property, or the District shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the District any case, proceeding, or other action of a nature referred to in clause (i) and the same shall remain not dismissed within 90 days following the date of filing; or (iii) there shall be commenced against the District any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, or bonded pending appeal within 90 days from the entry thereof; or (iv) the District shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the District shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

It is hereby acknowledged and agreed by the Parties that due to the limited nature of the Pledged Revenues, the failure by the District to pay principal or interest on the Reimbursement Obligation when due shall not, of itself, constitute an Event of Non-Compliance hereunder.

6.2 **Remedies For Events of Non-Compliance.** Upon the occurrence and continuance of an Event of Non-Compliance, any Party may proceed to protect and enforce its rights against the Party or Parties causing the Event of Non-Compliance by mandamus or such other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, including an action for specific performance. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

## ARTICLE VII

### MISCELLANEOUS

7.1 **No Recourse Against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board of Directors of the District, or any officer or agent of

the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Reimbursement Obligation. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of this Agreement and as a part of the consideration hereof, each Party specifically waives any such recourse.

7.2 **Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization, execution, or delivery of this Agreement shall be commenced more than thirty days after the authorization of this Agreement.

7.3 **Notices.** Except as otherwise provided herein, all notices required to be given under this Agreement shall be in writing and shall be sent by Electronic Means and by hand delivery, regular or certified mail, return receipt requested, or air freight, to the following addresses:

District: Aviation Station North Metropolitan District No. 1  
c/o Special District Management Services, Inc.  
141 Union Boulevard, Suite 150  
Lakewood, Colorado  
Attn: Lisa Johnson  
Telephone: 303-987-0835  
Email: [ljohnson@sdmsi.com](mailto:ljohnson@sdmsi.com)

With a copy to: McGeady Sisneros, P.C.  
450 East 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attn: MaryAnn McGeady  
Telephone: (303) 592-4380  
Email: [mmcgeady@mcgeadysisneros.com](mailto:mmcgeady@mcgeadysisneros.com)

The City and  
the City and County  
of Denver: Chief Executive Officer, Department of Aviation  
Denver International Airport  
Airport Office Building, 9<sup>th</sup> Floor  
8500 Pena Blvd.  
Denver, CO 80249-6340

With copies to: Denver City Attorney  
Denver City Attorney's Office  
1437 Bannock Street, Room 353  
Denver, CO 80202  
  
General Counsel, Airport Legal Services  
Denver International Airport  
Airport Office Building, 9<sup>th</sup> Floor

8500 Pena Blvd.  
Denver, CO 80249-6340

SVP, DEN Real Estate  
Denver International Airport  
Airport Office Building, 9<sup>th</sup> Floor  
8500 Pena Blvd.  
Denver, CO 80249-6340

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received on the day of transmittal if sent by Electronic Means or one day after mailing. Any Party by written notice so provided may change the address to which future notices shall be sent.

7.4 **Miscellaneous.**

(a) This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement among the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the Parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation, understanding, agreement, commitment, or warranty outside those expressly set forth in this Agreement. In the event of a conflict between the provisions of this Agreement or the Pena Station IGA, the provisions of this Agreement shall control.

(b) If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions hereof, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(c) It is intended that there be no third party beneficiaries of this Agreement. Nothing contained herein, expressed or implied, is intended to give to any person other than the Parties hereto any claim, remedy, or right under or pursuant hereto, and any agreement, condition, covenant, or term contained herein required to be observed or performed by or on behalf of any Party hereto shall be for the sole and exclusive benefit of the other Party.

(d) This Agreement may not be assigned or transferred by any Party without the prior written consent of each of the other Party. The City may not transfer or assign its rights in the Reimbursement Obligation unless (i) the District consents to such assignment or transfer and (ii) the City provides an opinion of counsel addressed to the District and each Financing District to the effect that the Reimbursement Obligation is exempt from the registration under the Colorado Municipal Bond Supervision Act or that such Act does not apply to the Reimbursement Obligation.

(e) This Agreement shall be governed by and construed under the applicable laws of the State.

(f) This Agreement may be amended or supplemented by the Parties, but any such amendment or supplement must be in writing and must be executed by all Parties.

(g) If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed.

(h) Each Party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

(i) Time is of the essence hereof.

(j) The Parties each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

7.5 **Effective Date and Termination Date.** This Agreement shall become effective on the Closing Date and terminate automatically on the Termination Date.

7.6 **Counterparts, Electronic Signatures, and Electronic Records.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one of the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by any Party hereto. The Agreement and any other documents requiring a signature may be signed electronically by each Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

7.8 **Agreement Subordinate to Agreements with United States.** This Agreement is subject and subordinate to terms, reservations, restrictions and conditions of any existing or future agreements between the City and County of Denver and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City and County of Denver for airport purposes and the expenditure of federal funds for the development of the City and County of Denver's airport system.

7.9 **Bond Ordinances.** This Agreement is in all respects subject and subordinate to any and all City applicable bond ordinances for the City and County of Denver's airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances.



7.10 **Financial Participation of the City is Limited.** The financial participation of the City provided in this Agreement shall derive solely from enterprise funds controlled by the Department of Aviation and not from the General Fund or any other funds of the City and County of Denver.

7.11 **No Discrimination in Employment.** In connection with the performance of work under the Agreement, the Parties may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The District shall insert the foregoing provision in all subcontracts.

7.12 **Examination of Records.** Any authorized agent of the City and County of Denver, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the District, involving transactions related to this Agreement until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations.

7.13 **Actions by the City or the City and County of Denver.** Where consent, waiver, approval, extension, notice or any other action (collectively, "Action") by the City (acting on behalf of the Department of Aviation) or the City and County of Denver is contemplated hereunder, such Action may be provided by the CEO of the Department of Aviation or its designee; provided however, that any notice of an Event of Non-Compliance by the City must be provided by the Mayor of the City and County of Denver.

[Signature page follows]

**EXHIBIT A**

**PAYMENT SCHEDULE**

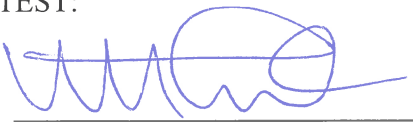
<b>Date of Payment</b>	<b>Amount of Current Interest</b>	<b>Amount of Compounded Interest</b>	<b>Amount of Principal</b>	<b>Total Payment</b>
<b>Total</b>				\$ _____

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

**AVIATION STATION NORTH  
METROPOLITAN DISTRICT NO. 1**

By:  \_\_\_\_\_  
President

ATTEST:

By:  \_\_\_\_\_  
Secretary



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

