

**INTERGOVERNMENTAL AGREEMENT REGARDING PENA STATION CORE
INFRASTRUCTURE IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING PENA STATION CORE INFRASTRUCTURE IMPROVEMENTS (“Agreement”) is made and entered into the date of the City’s signature below to be effective upon the Effective Date (hereinafter defined), by and between the **AVIATION STATION NORTH METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (“the District”), and the **CITY AND COUNTY OF DENVER** (the “City”) on behalf of the Department of Aviation (“DIA”) (the City and the District may individually be referred to herein as a “Party” and collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS, the District was organized pursuant to a Service Plan approved by the City Council of the City and County of Denver on February 25, 2013 as it may be amended 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 (the “Development”); and

WHEREAS, the purposes for which the District was formed is the design, acquisition, construction, installation, financing, and operation and maintenance of certain street, traffic and safety controls, water, sanitation, stormwater drainage, parks and recreation, safety protection, transportation, mosquito control, covenant enforcement, and limited fire protection services and improvements, all in accordance with the Service Plan (the “Improvements”); and

WHEREAS, the Service Plan discloses and establishes the intent of the District to enter into intergovernmental agreements concerning the financing, construction, operation and maintenance of the Improvements; and

WHEREAS, the District and the City entered into that certain Intergovernmental Agreement Regarding Pena Station Improvements dated May 21, 2015 (the “Original IGA”) that governed the joint development of Phase I of the Pena Station Improvements certain of which benefitted the service area of the District; and

WHEREAS; the District is undertaking the next phase of Improvements (the “Project”) within the Development, which Improvements will be located on property owned by the City (“DIA Property”) and Rail Stop LLC and are described on **Exhibit A** attached hereto and incorporated herein by reference (the “Additional Improvements”) that will benefit the taxpayers and residents within the City and the City agrees to share in the cost of the same; and

WHEREAS, the costs of the Additional Improvements are to be shared among the District and DIA and

WHEREAS, the District agrees that the City’s initial allocation of costs associated with the Additional Improvements is not-to-exceed **\$535,301.00** (the “City Initial Share”); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **Acknowledgment and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement.

2. **Term.** This Agreement shall commence upon the Effective Date and shall continue through and until Final City Acceptance of the Additional Improvements as more fully set forth below except for those provisions that expressly survive termination. It is intended that this Agreement address solely the rights and obligations with respect to the design, construction and funding of the Additional Improvements.

3. **Additional Improvements.** The Parties agree that the District shall undertake the design, construction and installation of all of the Additional Improvements, subject to: (i) the funding obligations of the City as set forth herein; and (ii) the funding obligations of the District.

4. **Additional Improvements Design.**

(a) The Parties acknowledge and agree that the District has engaged JR Engineering, Inc. (the "Project Engineer") for the design of the Additional Improvements. The District has provided the design drawings, plans and specifications for the Additional Improvements ("Plans and Specifications") to the City. The Plans and Specifications fully comply with the requirements of all governmental agencies, including, but not limited to, the City, and other entities having or exercising jurisdiction over construction activities occurring on or about the Pena Station Area. If, following approval by the City and/or applicable governmental agency, the City and/or applicable governmental agency requires any modifications (each, a "City Requested Change"), the District shall provide notice of the same to DIA. DIA shall have five (5) Working Days following receipt of notice to any City Requested Change to review and object to the same in writing. If DIA does not object to a City Requested Change in writing within said five (5) Working Day period, the City shall be deemed to have approved the same. The District shall deliver a set of the Plans and Specifications, as well as one or more CDs containing the Plans and Specifications, to DIA as soon as is practicable after approval thereof by all applicable governmental agencies.

5. **Contracting / Construction.**

(a) The District's contract with the General Contractor (the "GC Contract") is attached hereto as **Exhibit C.**

(b) The District shall construct and complete the Additional Improvements in accordance with the Plans and Specifications and the GC Contract. Any significant deviation from or modification to the Plans and Specifications in completing the Additional Improvements shall be subject to the prior review and written approval of DIA if and to the extent it negatively impacts the intended use, functionality, or availability of the Additional Improvements to DIA ("Material Scope Change"). After receipt of notice of a significant deviation, DIA shall have

five (5) Working Days to object to such changes in writing to the District. If the Parties are unable to agree on a resolution of the Material Scope Change to the satisfaction of both Parties within five (5) Working Days after receipt of DIA's written objection, then the Expedited Dispute resolution process set forth in Section 9(f) below may be invoked by either Party. Failure of DIA to object in writing as specified in the prior sentence shall be deemed as approval of such change(s) or change order(s) resulting from the Material Scope Change for purposes of this Agreement. DIA, including its representatives, engineers and consultants shall be allowed reasonable access to the Project site for review of progress on completion of the Additional Improvements subject to insurance requirements and construction necessitated restrictions as deemed reasonable by the contractor(s) of the Project.

(c) **Procedure.**

(i) **Construction Contract Requirements.** The GC Contract shall require the contractor and all subcontractors to provide warranties for the period of time required by the City. The City shall be named as an additional insured under any insurance policies required by the GC Contract. The District shall provide DIA with a copy of the GC Contract and any subcontracts, including any and all change orders, addendum or other modifying documentation, as soon as available. The District agrees to execute an addendum to the GC Contract allowing for its assignability to the City in the event the District defaults thereunder or under this Agreement, and will provide the City with a copy of the GC Contract addendum.

(ii) **Approval of Costs.** The Parties agree that the total estimated Costs (defined below) associated with the funding, design and construction of the Additional Improvements is \$2,749,034.00 ("Estimated Construction Cost") and are described on **Exhibit B** attached hereto. For purposes hereof, "Costs" shall mean all hard and soft costs incurred in connection with the funding, design (including all engineering expenses), construction and installation of the Additional Improvements, including, but not limited to, costs of labor, materials and suppliers, engineering, construction management, project management, design, marketing and consultant fees and costs, legal fees and costs, blue printing services, construction staking, demolition, soil amendments or compaction, any processing, plan check or permit fees for the Additional Improvements, engineering services required to obtain a permit for and complete the Additional Improvements, costs of compliance with all applicable laws, costs of insurance, costs of financial assurances, any corrections, changes or additions to work required by governmental authorities, or necessitated by site conditions, municipal, state and county taxes imposed in connection with the construction of the Additional Improvements, any warranty work, and any other costs incurred in connection with the performance of the obligations of the District hereunder to complete the Additional Improvements.

(iii) **Periodic Reports.** Commencing on the date the work commences hereunder, the District will provide periodic reports to DIA, on the fifth (5th) Working Day of each month, which periodic report shall include the status of completion and costs of the Additional Improvements.

(iv) **Pre-Construction Meeting/Interim Inspections.** Following the execution hereof, the District shall schedule a pre-construction meeting with the General Contractor. The District shall give DIA notice of the time, date and location of such pre-

construction meeting. At the pre-construction meeting, the General Contractor shall provide a proposed construction schedule and schedule of monthly inspections at which the work subject to the Draw Request being processed for the prior 30 day period shall be inspected to confirm its percentage of completion and its compliance with the Plans and Specifications (each, a “Monthly Inspection”). The Project Engineer, the General Contractor and a representative of the District shall be present at the pre-construction meeting and each Monthly Inspection. DIA shall have the right, but not the obligation to attend the pre-construction meeting or any of the Monthly Inspections.

(d) **Walk-Through and Punch List.** The District shall notify DIA prior to final completion of the Additional Improvements, with the date(s) and time(s) the City will inspect the Additional Improvements. Within ten (10) days after receipt by DIA of such notice from the District, the District and DIA shall jointly inspect the Additional Improvements and produce a punchlist (the “Joint Punchlist”). If the Parties are unable to agree upon a punchlist within five (5) days after the joint inspection described above, then any dispute related to such punchlist shall be submitted to the Expedited Dispute resolution process below. DIA shall have the right to be present at all inspections by the City. The District shall provide DIA with copies of any inspection reports or punchlists received from the City in connection with the inspection of the Additional Improvements and the District shall be responsible to correct punchlist items from the City and those contained on the Joint Punchlist. If the City grants preliminary acceptance regarding Additional Improvements that it will accept for maintenance, it shall conclusively be presumed that such Additional Improvements were completed in accordance with this Agreement, subject to completion of any punchlist items provided by the City.

(e) **Correction of Joint Punchlist Items.** The District shall cause any Joint Punchlist items to be corrected within the time required by the City or such shorter time as may be agreed to by the Parties as part of the Joint Punchlist.

(f) **Initial and Final Acceptance.** The District shall provide DIA with prior notice of its intent to seek preliminary acceptance of the Additional Improvements from the City. For purposes of processing final draws on the Construction Account, DIA shall accept the Additional Improvements as complete after preliminary acceptance from the City (prior to the applicable warranty period commencing), and prior to final acceptance by the City (“Initial City Acceptance”) upon receipt, review and approval by DIA’s accountant and engineer of the following:

(i) Copies of lien waivers for the benefit of the District and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full;

(ii) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form), canceled checks and any other requested documentation to verify the amount requested; and

(iii) Such other documentation, records and verifications as may reasonably be required by DIA.

(iv) DIA may, in its discretion, waive any of the foregoing conditions as to the Initial City Acceptance of the Additional Improvements. The District shall be responsible, at its sole cost and expense, for the maintenance of the Additional Improvements until such time as they have been finally accepted by and conveyed to the City ("Final City Acceptance"), in accordance herewith.

(g) **Ownership and Maintenance**. The Parties acknowledge and agree that certain improvements that comprise the Project may be perpetually owned, operated and maintained by the City, DIA or the District. Further, DIA, the District and certain other landowners within the Pena Station Area may agree to cost-share the operations and maintenance costs of some of the improvements. The City and the District shall work cooperatively and in good faith to enter into an intergovernmental agreement (the "Operations IGA") prior to completion of the Additional Improvements which Operations IGA to determine the operations and maintenance obligations for the Additional Improvements.

(h) **Assignment of Warranties**. Upon Initial City Acceptance of the Additional Improvements, for any Additional Improvements located on DIA Property, the District shall cause any warranties and/or guarantees of workmanship or materials to be assigned to City on a non-exclusive basis, in a form mutually acceptable to the Parties. The District shall be responsible for obtaining any contractor consents, if necessary, to effectuate such assignment. Notwithstanding the foregoing, if the District is required to perform any warranty repairs to Additional Improvements following Initial City Acceptance, the City shall cooperate with the District to enforce any such warranties and/or guarantees that have been assigned.

6. **Funding for Design and Construction Costs**.

(a) **Costs of Additional Improvements**. The estimated cost for the Additional Improvements is attached hereto as **Exhibit B**. The Parties agree that the City Initial Share is equal to approximately 19.73% of the total estimated cost of the Additional Improvements (the "City Proportionate Amount"). The Parties further agree that the District Initial Share is equal to approximately 80.27 % of the total estimated cost of the Additional Improvements **Initial Funding Obligation**. City shall deposit with **First Bank** (the "Bank"), in a separate escrow account pursuant to escrow instructions agreed to by the City and the District (the "Escrow Agreement"), the City Initial Share within 30 days following mutual execution of this Agreement.

(b) **Respective Draw Request Percentage Shares**. DIA and the District hereby agree that each monthly Draw Request shall only be for the City's share of actual construction costs and the applicable soft costs, including permits, fees, engineering design, materials testing and inspection, project management fee, art work and project contingency based on the City Proportionate Amount.

(c) **Construction Funds Administrator; Draw Requests**. DIA and the District hereby appoint and designate the Bank as the entity to hold and disburse funds from the Account for payment of the Costs pursuant to the Escrow Agreement. The District may periodically draw funds (each, a "Draw Request"), by written request to the Bank with a copy to DIA that will allow timely payment of amounts due to contractors for the design and construction of the Additional Improvements pursuant to the terms and conditions of the Escrow Agreement.

(d) **Objection**. Any portion of a Draw Request that DIA does not disapprove by written notice to the District within five (5) days following receipt thereof will be deemed approved. DIA may only object to a Draw Request in the event such Draw Request does not comply with the requirements of the Escrow Agreement. DIA shall deliver written notice of any objection pursuant to the preceding sentence to the District within the five (5) day period described in the first sentence of this Section and such objection shall be specific as to the nature and amount of such objection (“**Objection Notice**”). If the District timely receives an Objection Notice, then, DIA and the District shall meet and in good faith attempt to resolve all objections. If all such objectionable items cannot be resolved within such five (5) day period after receipt, then either Party may submit the matter to the Expedited Dispute process as provided below. Notwithstanding the foregoing, following the Bank’s disbursement process, the Bank shall be authorized to disburse any disputed amount with the remainder of the Draw Request, however, the payment of any future Draw Request(s) may be subject to adjustment to reflect the results, as directed by the Informal Arbitrator who conducted the Expedited Dispute resolution process, from any prior Objection Notices.

(e) **Cost Increases**. The GC Contract will require the General Contractor to notify the District and DIA in writing (each, a “**Cost Increase Notice**”) of any proposed Cost Increase (hereinafter defined). To the extent that the Estimated Construction Costs increase for any reason whatsoever, except for a DIA Directed Change (each, a “**Cost Increase**”), DIA’s share shall nevertheless not increase above the City Initial Share, and the District shall be solely responsible for any cost increases.

(i) Notwithstanding the foregoing, if either DIA requests a change of scope that increases the costs of the Additional Improvements (a “**DIA Directed Change**”), DIA shall be responsible for 100% of the Cost Increase associated therewith, which amount must be funded into DIA’s Construction Account prior to the District being obligated to either include such work within the GC Contract and/or process a change order to the GC Contract to include such DIA Directed Change. The District shall cause the GC Contract to require the contractor to provide notice to DIA and the District of any Cost Increase.

(f) **Final Payment**. Promptly, but in any event not more than sixty (60) days following Initial City Acceptance, the District shall request the Bank to pay any final Draw Request from the Construction Accounts, including, but not limited to any retainage previously withheld pursuant to the GC Contract.

(g) **Accounting**. The District shall keep good and accurate books and records in sufficient detail to allow the Costs to be calculated, which books and records shall be made available for review (upon reasonable prior written notice) by DIA. Within sixty (60) days following Initial City Acceptance, the District shall deliver to DIA a reasonably detailed final accounting of the Costs.

7. **Easements/Licenses**. The City agrees to grant to the District and its construction contractors a temporary, non-exclusive license to enter upon the DIA Property as reasonably necessary for the installation of the Additional Improvements and/or the performance of the District’s responsibilities under this Agreement. The form of such license shall be mutually agreed upon by the Parties. No licenses over any portion of the DIA Property will be granted that would

unreasonably interfere with or adversely impact DIA's use or development of the DIA Property. The rights under this Section or any instruments delivered hereunder shall terminate upon the expiration of all applicable warranty periods.

8. **Default/Self-Help Remedy.**

(a) **Notice of Default.** If the District: (i) breaches its obligation under this Agreement to complete or cause the completion of the Additional Improvements in accordance with the Plans and Specifications; (ii) otherwise breaches any material obligation under this Agreement; or (iii) fails to comply with any material provision of the GC Contract beyond any applicable express notice or cure periods; then, for purposes of this Agreement, the occurrence of any of the events in 8(a)(i)-(iii) shall be referred to herein as an "Event of Default." The City shall provide written notice to the District of the occurrence of any Event of Default. In addition, the City may assume and take over the construction of the Additional Improvements by providing written notice (the "Assumption Notice") to the District within thirty (30) days after the City's notice of the occurrence of the Event of Default. The City's assumption of the construction of the Additional Improvements shall not include the assumption of any liability for acts or omissions occurring prior to the Assumption Notice. If the City does not deliver an Assumption Notice as provided above, then the City shall be deemed to have waived its rights pursuant to this Section with respect to the applicable Event of Default by the District.

(b) **Assumption Right.** If the City delivers an Assumption Notice, then: (i) the District shall cooperate to allow the City to take over and complete the incomplete Additional Improvements, including the execution and delivery to the City of such agreements, documents or instruments as may be reasonably necessary to assign to the City the GC Contract pertaining to the Additional Improvements; (ii) the City shall be entitled to make draw requests from the Escrow Account; and (iii) the District shall be relieved of all further obligations under this Agreement with respect to the completion of the incomplete Additional Improvements, including funding any Cost Increases.

9. **Arbitration of Disputes.** Except as provided below for an Expedited Dispute, Any questions, dispute, claim or controversy arising under or in connection with this Agreement on which the Parties cannot agree (a "Dispute") shall be resolved by mandatory arbitration in accordance with the Arbitration Rules for the Construction Industry of the American Arbitration Association currently in effect (the "Rules") and in accordance with the following provisions:

(a) **Dispute Notice.** If either Party believes that a Dispute exists, it may notify the other Party thereof, which notice (a "Dispute Notice") shall identify the Dispute. As promptly as practicable, and in any event within five (5) days following the delivery of the Dispute Notice, the Parties shall meet in an attempt to resolve the Dispute. If the Dispute cannot be resolved at that meeting, either Party may submit the Dispute to arbitration as hereinafter provided.

(b) **Appointment of Arbitrator.** A single arbitrator at the Denver, Colorado office of the Judicial Arbiter Group shall be the Arbitrator; provided, however, that the individual selected must be recognized in the Denver metropolitan area as having competence in the subject matter of the Dispute, and shall be experienced in real estate and construction matters. If the Parties are unable to agree upon the Arbitrator, then, within ten (10) days after notice by one Party

to the other, the District shall appoint one (1) Arbitrator at the Judicial Arbitrator Group and DIA shall appoint one (1) Arbitrator at the Judicial Arbitrator Group and the appointed arbitrators shall select one (1) Arbitrator to hear the Dispute. The term “Arbitrator” as used herein shall mean and refer to the single arbitrator selected pursuant to this Section.

(c) **Conduct of Arbitration.** The arbitration process shall generally be conducted by the designated Arbitrator in accordance with the Rules, but the Arbitrator shall have discretion to vary from those Rules in light of the nature or circumstances of any particular Dispute. In all events, unless waived by the Parties, the Arbitrator will conduct an arbitration hearing at which the Parties and their counsel shall be present and have the opportunity to present evidence and examine the evidence presented by the other Party. The proceedings at the arbitration hearing shall, unless waived by the Parties, be conducted under oath and before a court reporter. The Parties shall cooperate in good faith to permit, and the Arbitrator shall render, a decision in the arbitration proceeding within twenty (20) days following the appointment of the Arbitrator. The Parties shall also endeavor to submit a joint statement setting forth each Dispute to be submitted to arbitration, including, a summary of each Party’s position on each Dispute. In addition, the Arbitrator shall require the nonprevailing Party to pay all reasonable costs and fees, including attorneys’ fees, of the prevailing Party and costs and fees of the Arbitrator and any interest due to a contractor as a result of delay in payment caused by the proceedings.

(d) **Standards of Conduct.** The Parties agree that with respect to all aspects of the arbitration process contained herein they will conduct themselves in a manner intended to assure the integrity and fairness of that process. To that end, if a Dispute is submitted to arbitration, the Parties agree that they will not contact or communicate with the Arbitrator who was appointed as arbitrator with respect to any Dispute either *ex parte* or outside of the contacts and communications contemplated by this Section 9 and the Parties further agree that they will cooperate in good faith in the production of documentary and testimonial evidence in a prompt and efficient manner to permit the review and evaluation thereof by the other Party.

(e) **Decision.** To the extent allowed by law, the decision of the Arbitrator with respect to any Dispute shall be final and binding on the Parties and not subject to appeal, in the absence of fraud, and the prevailing Party may enforce the same by application for entry of judgment in any court of competent jurisdiction or by other procedures established by law.

(f) **Disputes Related to Material Scope Changes, Draw Request and Joint Punchlist Items.** Notwithstanding anything to the contrary herein, disputes related to the amount of any Draw Requests, Material Scope Changes, Party Directed Changes or any Joint Punchlist items (“Expedited Disputes”) shall all be resolved by an independent, impartial third party qualified to resolve such disputes as determined by the DIA and the District (“Informal Arbitrator”). If DIA and the District cannot agree on an Informal Arbitrator, then the District shall select one (1) engineer and DIA shall select one (1) engineer and the engineers so selected shall promptly select an independent, impartial third party qualified to act as the Informal Arbitrator and resolve the Expedited Dispute. Within five (5) days after either DIA or the District delivers a Dispute Notice, the District and DIA shall deliver to the Informal Arbitrator, a written statement of how each of them believes the Expedited Dispute should be resolved, together with reasonable supporting documentation of such position (“Resolution Notice”). Within seven (7) days after receipt of each Resolution Notice, the Informal Arbitrator shall approve either DIA’s or the

District's Resolution Notice and shall deliver written notice of such approval to DIA and the District. The decision of the Informal Arbitrator shall be binding on DIA and the District with respect to the applicable Expedited Dispute. DIA and the District shall timely cooperate with the Informal Arbitrator in rendering his or her decision. The District shall pay ½ and DIA shall pay ½ of the Informal Arbitrator's fees. DIA and the District shall each bear all of its own costs and attorneys' fees in the resolution of the Expedited Dispute. DIA and the District acknowledge that there is a benefit to having work done as expeditiously as possible and that there is a need for a streamlined method of making decisions described in this Section so that work is not delayed. Notwithstanding anything to the contrary contained herein, in the event that the subject of the Expedited Dispute is a Cost Increase, in no event shall either DIA's or the District's Resolution Notice contain a requirement for the other to pay additional amounts hereunder. In such event, the only resolution which may be allowed under this Section will be for a reduction in the project scope to offset the Cost Increase.

10. **Warranties.** The District shall construct Improvements in a good and workmanlike manner and in substantial compliance with the Plans and Specifications and the GC Contract and requirements of this Agreement.

11. **Time of Performance.** Upon the Effective Date, the District shall diligently pursue prosecution of construction of the Additional Improvements through completion. Subject to Force Majeure, DIA and the District anticipate that the Additional Improvements will be substantially complete by December 31, 2023, unless otherwise agreed to in writing by both DIA and the District.

12. **Force Majeure.** The completion date and all other dates set forth in any construction schedule and the time for performance by the District under the construction schedule or this Agreement, shall be extended by a period of time equal to any period that such performance or progress in construction of the Additional Improvements is delayed due to any Dispute, as defined above, acts or failure to act of any governmental authority including DIA and the City, strike, riot, act of war, act of terrorism, act of violence, unseasonable or intemperate weather, act of god, or any other act, occurrence or non-occurrence beyond the District's reasonable control (each, an "Uncontrollable Event"). Notwithstanding the foregoing, delay caused by the District's failure to pay amounts it owes under this Agreement or that are otherwise due and payable by the District relating to this Agreement or the Additional Improvements, including, without limitation, amounts owed to contractors, shall not constitute an Uncontrollable Event unless such delay is caused by the failure of DIA to timely perform its obligations under this Agreement.

13. **Representations.** Both the District and DIA hereby represent they have sufficient funds available and appropriated for the purposes of satisfying their obligations hereunder.

14. **Remedies.** Subject to DIA's assumption right as set forth above and the provisions contained in Section 8 above, DIA and the District each acknowledge and agree that either may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be awarded as part of its judgment or award its reasonable attorneys' fees.

15. **Certification of Compliance with Illegal Alien Statute.** By its execution hereof, the District confirms that it requires all contractors providing services for the Additional Improvements to comply with the provisions of C.R.S. § 8-17.5-102(1), and to certify that such contractor does not knowingly employ or contract with an illegal alien who will perform work under the GC Contract or any subcontracts, and that said contractor will participate in the E-Verify Program or Department Program (as defined in C.R.S. §§ 8-17.5-101(3.3) and (3.7)) in order to confirm the employment eligibility of all employees who are newly hired to perform work on the Project.

16. **M/WBE and Prevailing Wage Compliance.** The District hereby confirms that in its performance of the design and construction of the Additional Improvements, the District will comply with all M/WBE program requirements and prevailing wage requirements of the City.

The District is required to monitor its contractors' work and activities related to the Project to affirm that such contractors in fact comply with applicable DSBO requirements throughout the life of the contract. The District shall identify and provide a liaison for DSBO to assist with such monitoring work, and The District shall also require its contractors to provide one or more similar liaison(s) to DSBO. The City acknowledges that the contractors' liaison(s) may be more knowledgeable than The District liaison regarding the specific Project work and its compliance with the DSBO Ordinances. The liaisons shall be responsible for, without limitation, obtaining and coordinating: 1) contact information of all contractors and The District personnel directly related to the applicable Project work, 2) submittals, 3) invoicing and payment information, and 4) reporting information and interfacing with DSBO, all to address various issues or concerns related to Project compliance with the applicable DSBO requirements. DSBO shall perform and assist with compliance monitoring oversight to ensure compliance with the DSBO Ordinances.

a. **Goal for Design.** This Agreement and the related design work are subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code ("D.R.M.C."), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "MWBE Ordinance"); and any Rules and Regulations promulgated pursuant thereto. The design goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity ("DSBO") is 26%.

b. **Goal for Construction.** The construction work under this Agreement is also subject to §§ 28-31 to 28-40 and 28-51 to 28-90 of the MWBE Ordinance and the Rules and Regulations. The construction goal for MWBE participation established for this Agreement by DSBO is 22%.

c. If change orders or any other modifications to the applicable Project work are issued by The District, then The District shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work. If change orders or any other modifications to the applicable Project work are issued by The District contractor, then The District contractor shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work.

d. The District's failure to comply with these provisions may be a material breach of this Agreement and may result in withheld future Proceeds payments by the City. A contractor's failure to comply with these provisions may subject the contractor to sanctions set forth in the DSBO Ordinances. Further information and guidance can be found at the following: <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Economic-Development-Opportunity/Do-Business-with-the-City>, or from DSBO directly via email at DSBO@flydenver.com.

17. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

the District: Aviation Station North Metropolitan District No. 1
c/o CliftonLarsonAllen LLP.
c/o CliftonLarsonAllen LLP
8390 E. Crescent Pkwy., Suite 500
Greenwood Village, Colorado 80111
Attn: Matt Urkoski

With a Copy to: McGeady Becher, P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Attention: Paula Williams

DIA and City: Chief Executive Officer, Department of Aviation
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Blvd.
Denver, Colorado 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, 9th Floor
8500 Peña Blvd.

Denver, Colorado 80249-6340

SVP, DEN Real Estate
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Blvd.
Denver, Colorado 80249-6340

SVP - Airport Infrastructure Management
Denver International Airport
Airport Office Building
8500 Peña Blvd.
Denver, Colorado 80249-6340

Program Manager
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Blvd.
Denver, Colorado 80249-6340

18. **Appropriation.** Pursuant to Section 29-1-110, C.R.S., any financial obligations of the District and DIA contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis. The financial participation of DIA and the City provided in this Agreement shall derive solely from the enterprise funds controlled by DIA and not from the General Fund or any other funds of the City.

19. **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

20. **Colorado Law.** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, City and County of Denver, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

21. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

22. **No Third Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

23. **Entirety.** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

24. **Amendments.** This Agreement may be amended, in whole or in part, only by written instrument executed by the Parties.

25. **Agreements Subordinate to Agreements with United States.** This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City 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 City for Airport purposes and the expenditure of federal funds for the development of the City's airport system.

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

27. **Non-Discrimination in Employment.** In connection with the performance of work under this Agreement, the District 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 variation, marital status, or physical or mental disability. the District shall cause the foregoing to be inserted in the GC Contract and cause the General Contractor to include the same in all subcontracts.

28. **Examination of Records.** Any authorized agent of the City, 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 the 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.

29. **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. This 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.

30. **Consent by DIA.** Where consent, waiver, approval, extension, notice or other action by DIA or the City is contemplated hereunder, such may be provided by the CEO of the Department of Aviation or its designee, provided, however, that any default notice or termination of this Agreement by the City must be provided by the Mayor of the City.

[SIGNATURE PAGES FOLLOW]