

## INTERGOVERNMENTAL AGREEMENT REGARDING PENA STATION AREA IMPROVEMENTS

**THIS INTERGOVERNMENTAL AGREEMENT REGARDING PENA STATION AREA 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 (“Aviation No. 1”), and the City and County of Denver (the “City”) on behalf of the Department of Aviation (“DIA”) (the City and Aviation No. 1 may individually be referred to herein as a “Party” and collectively referred to as the “Parties”).

### WITNESSETH:

WHEREAS, City is the owner of certain real property located at approximately 61<sup>st</sup> Avenue and Pena Boulevard in Denver, Colorado (the “DIA Property”), which DIA Property is depicted on **Exhibit A** attached hereto and made a part hereof;

WHEREAS, Aviation No. 1 is a quasi-municipal corporation and political subdivision that has been formed to *inter alia* provide financing and public improvements to the taxpayers, residents and others within its service area;

WHEREAS, the service area of Aviation No. 1 includes the DIA Property, certain real property (the “Developer’s Property”) owned by Rail Stop LLC, a Colorado limited liability company (“Developer”) and certain real property owned by SMT (defined below) (the “SMT Property” and collectively, with the Developer’s Property, the “Aviation Property”), which Aviation Property is also depicted on **Exhibit A** attached hereto and incorporated herein by reference;

WHEREAS, the DIA Property and the Aviation Property along with the Smith Property (defined below) as reflected on **Exhibit A**, comprise a future multi-use development to be known as the “Pena Station Area”;

WHEREAS, Aviation No. 1 has been designated as the management district for Aviation Station North Metropolitan District No. 2 (“Aviation No. 2”), Aviation Station North Metropolitan District No. 3 (“Aviation No. 3”), Aviation Station North Metropolitan District No. 4 (“Aviation No. 4”), Aviation Station North Metropolitan District No. 5 (“Aviation No. 5”) and Aviation Station North Metropolitan District No. 6 (“Aviation No. 6” and together with Aviation No. 1, Aviation No. 2, Aviation No. 3, Aviation No. 4 and Aviation No. 5, the “Aviation Districts”);

WHEREAS, the Aviation Property has yet to be included within the boundaries of a particular Aviation District, but it is contemplated that: (i) the Developer’s Property will be included within Aviation No. 2 or Aviation No. 3; (ii) SMT’s Property may be included within Aviation No. 5; and (iii) the DIA Property may be included within Aviation No. 6;

WHEREAS, in connection with the development of the Pena Station Area it has been determined that certain public improvements need to be installed that will benefit the Aviation Districts, DIA and certain other property owned by other parties within the Pena Station Area;

WHEREAS, Aviation No. 1, on behalf of: (i) the Aviation Financing Districts (defined below); (ii) DIA; and (iii) certain of the other landowners benefitted by such public improvements within the Pena Station Area, including, but not limited to, SMT and Smith No. 1 (defined below) has agreed to coordinate the design, initial financing and construction of certain of the improvements necessary to develop and support the Pena Station Area;

WHEREAS, DIA has agreed to contribute funds to complete certain public improvements serving the Pena Station Area as more fully set forth herein;

WHEREAS, concurrently herewith, Aviation No. 1, Smith No. 1 (hereinafter defined) and the City are entering into that certain Project Improvements Reimbursement Agreement (the "PIRA") pursuant to which Aviation No. 1 and Smith No. 1 agree to impose the Smith Mill Levy Ten (as defined below) and the Aviation Mill Levy Ten (as defined below), as applicable, for the purpose of paying principal and interest on the DIA Funding Obligation as set forth in the PIRA and as more fully described in Section 8 below; and

WHEREAS, concurrently herewith, Aviation No. 1 and the City are entering into that certain Additional Project Improvements Reimbursement Agreement (the "Additional PIRA") pursuant to which Aviation No. 1 agrees to reimburse DIA Three Million and 00/100ths Dollars (\$3,000,000) plus interest for certain additional storm water improvements (the "Additional Reimbursement Obligation"); and

WHEREAS, Smith Metropolitan District No. 1 ("Smith No. 1") is a quasi-municipal corporation and political subdivision that has been formed to *inter alia* provide financing and public improvements to the taxpayers, residents and others within its service area;

WHEREAS, the service area of Smith No. 1 (the "Smith Property") is also adjacent to the DIA Property and the Aviation Property and is within the Pena Station Area, which real property is also depicted on Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, Smith No. 1 has also agreed to contribute funds to complete certain of the public improvements benefitting the Smith Property within the Pena Station Area pursuant to that certain Intergovernmental Agreement Regarding Pena Station Improvements dated concurrently herewith (the "Aviation/Smith IGA");

WHEREAS, concurrently herewith, the City is entering into that certain Development Agreement (the "Development Agreement") with the Developer;

WHEREAS, the Development Agreement also addresses certain funding obligations of the Developer with respect to the public improvements necessary to serve the Pena Station Area;

WHEREAS, Aviation No. 1's service plan authorizes it to finance and construct public improvements, including, but not limited to, transportation, roads, parks, water, drainage and sanitary sewer service improvements;

WHEREAS, pursuant to Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-201, et. seq., Colorado Revised Statutes, the Parties may cooperate and contract with each other to provide any function, service or facility lawfully authorized by such governments;

WHEREAS, as is more particularly set forth herein, in consideration for DIA's agreement to contribute to the costs associated with design, construction and installation, Aviation No. 1 is willing to undertake the design, financing and construction of certain of the public improvements within the Pena Station Area;

WHEREAS, the Parties desire to set forth their agreement with respect to Aviation No. 1's design and construction of certain of the public improvements within the Pena Station Area and DIA's contribution to the costs thereof according to the terms and conditions stated in this Agreement.

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. **Definitions.**

- (a) "ACI Documents" shall have the meaning set forth in Section 6 below.
- (b) "Additional PIRA" shall have the meaning set forth in the Recitals.
- (c) "Additional Reimbursement Obligation" shall have the meaning set forth in the Recitals.
- (d) "Anticipated Opening Date" means the anticipated date for opening of revenue service of the RTD East Rail Line which currently is expected to occur in spring, 2016.
- (e) "Approved Contract Form" shall have the meaning set forth in Section 6 below.
- (f) "Arbitrator" shall have the meaning set forth in Section 11(b) below.
- (g) "Assumption Notice" shall have the meaning set forth in Section 10(a) below.
- (h) "Aviation Constructed Improvements" shall mean those improvements set forth on **Exhibit B** attached hereto.

- (i) “Aviation Construction Account” shall have the meaning set forth in Section 7(c) below.
- (j) “Aviation Draw%” shall have the meaning set forth in Section 7(b) below.
- (k) “Aviation Financing Districts” shall mean each Aviation District that executes an Aviation Pledge.
- (l) “Aviation Pledge” shall have the meaning set forth in Section 8 below.
- (m) “Aviation Pre-Development Costs” shall have the meaning set forth in Section 7(a) below and are reflected on **Exhibit C** attached hereto.
- (n) “Aviation Share” shall have the meaning set forth in Section 7(a) below.
- (o) “Aviation/Smith IGA” shall have the meaning provided in the recitals.
- (p) “Aviation Station Mill Levy Ten” shall mean an ad valorem mill levy in the amount of ten (10) mills to be imposed on the real property within and to be included within Aviation No. 1 and the Aviation Financing Districts pursuant to the Developer Inclusion Agreement and as more particularly defined in the PIRA.
- (q) “Aviation Station Mill Levy Three” shall mean an ad valorem mill levy in the amount of three (3) mills to be imposed on the real property within and to be included within Aviation No. 1 and the Aviation Financing Districts pursuant to the Developer Inclusion Agreement and as more particularly defined in the Additional PIRA.
- (r) “Bank” shall mean MidFirst Bank.
- (s) “Bank Non-Assumption Notice” shall have the meaning set forth in Section 10(a) below.
- (t) “Bid Package” shall have the meaning set forth in Section 6 below.
- (u) “Budget” shall have the meaning set forth in Section 6 below.
- (v) “City” shall have the meaning provided in the introductory paragraph of this Agreement.
- (w) “City Requested Change” shall have the meaning set forth in Section 5 below.
- (x) “Closing Date” shall mean the date of the closing of the MidFirst Loan.
- (y) “Construction Accounts” shall mean the Aviation Construction Account, DIA Construction Account and Smith Construction Account.
- (z) “Construction Disbursing Agreement” shall have the meaning set forth in Section 7(d) below.

- (aa) “Cost Increase” shall have the meaning set forth in Section 7(e) below.
- (bb) “Cost Increase Notice” shall have the meaning set forth in Section 7(e) below.
- (cc) “Developer” shall have the meaning set forth in the Recitals above.
- (dd) “Developer Inclusion Agreement” shall have the meaning set forth in Section 8 below.
- (ee) “Development Agreement” shall have the meaning set forth in the Recitals above.
- (ff) “DIA” shall have the meaning provided to it in the introductory paragraph of this Agreement.
- (gg) “DIA Construction Account” shall have the meaning set forth in Section 7(c) below.
- (hh) “DIA Draw%” shall have the meaning set forth in Section 7(b) below.
- (ii) “DIA Funding Obligation” shall have the meaning set forth in Section 8.
- (jj) “DIA Property” shall mean the approximately 60 acres of property owned by the City and shown on **Exhibit A**.
- (kk) “DIA Share” shall have the meaning set forth in Section 7(b) below.
- (ll) “Dispute” shall have the meaning set forth in Section 11 below.
- (mm) “Dispute Notice” shall have the meaning set forth in Section 11(a) below.
- (nn) “Draw Request” shall have the meaning set forth in Section 7(f) below.
- (oo) “Effective Date” shall mean the date of Closing.
- (pp) “Estimated Construction Cost” shall have the meaning set forth in Section 6(a)(ii) below.
- (qq) “Event of Default” shall have the meaning set forth in Section 10(a).
- (rr) “Expedited Dispute” shall have the meaning set forth in Section 11(f) below.
- (ss) “Final City Acceptance” shall have the meaning set forth in Section 6(b) below.
- (tt) “First Loan Documents” shall mean all documents evidencing and securing the MidFirst Loan.

- (uu) “GC Contract” shall have the meaning set forth in Section 6 below.
- (vv) “General Contractor” shall have the meaning set forth in Section 6 below.
- (ww) “Inclusion Agreement” and “Inclusion Agreements” shall have the meaning set forth in Section 8 below.
- (xx) “Informal Arbitrator” shall have the meaning set forth in Section 11(f) below.
- (yy) “Initial City Acceptance” shall have the meaning set forth in Section 6(d) below.
- (zz) “Joint Punchlist” shall have the meaning set forth in Section 6(b) below.
- (aaa) “Line Item Proportionate Share” shall have the meaning set forth in Section 7(e) below.
- (bbb) “Material Scope Change” shall have the meaning set forth in Section 6 below.
- (ccc) “MidFirst Loan” shall mean that certain construction loan in the amount of \$4,000,000 made by MidFirst Bank to Developer.
- (ddd) “O&M Matrix” shall have the meaning set forth in Section 6(e) below and is attached as **Exhibit D**.
- (eee) “Objection Notice” shall have the meaning set forth in Section 7(g) below.
- (fff) “Operations IGA” shall have the meaning set forth in Section 6(c) below.
- (ggg) “Party” and “Parties” shall each have the meanings provided in the introductory paragraph of this Agreement.
- (hhh) “Party Directed Change” shall have the meaning set forth in Section 7(e) below.
- (iii) “Pena Station” shall mean an RTD rail station to be located on the DIA Property within the Pena Station Area.
- (jjj) “Pena Station Area” shall have the meaning set forth in the Recitals.
- (kkk) “PIRA” shall have the meaning set forth in the Recitals.
- (lll) “Plans and Specifications” shall have the meaning set forth in Section 5 below.
- (mmm) “Project Engineer” shall have the meaning set forth in Section 5 below.

(nnn) “Resolution Notice” shall have the meaning set forth in Section 11(f) below.

(ooo) “Responsible Entity” shall have the meaning set forth in Section 6(e) below.

(ppp) “RTD” shall have the meaning set forth in Section 4(b) below.

(qqq) “RTD Station and Association Work” shall mean the RTD Station Work together with the RTD Station-Related Improvements.

(rrr) “RTD Station-Related Improvements” shall mean the Station Area Improvements and the Station Parking Lot.

(sss) “RTD Station Work” shall mean the Pena Station rail platform, canopies, station amenities and all associated rail line work necessary to allow Pena Station to be fully operational and open coincident with the opening of revenue service of the RTD East Rail Line on the Anticipated Opening Date.

(ttt) “Rules” shall have the meaning set forth in Section 11 below.

(uuu) “Smith Construction Account” shall have the meaning set forth in 7(c) below.

(vvv) “Smith Districts” shall have the meaning set forth in the Recitals.

(www) “Smith Draw%” shall have the meaning set forth in Section 7(b) below.

(xxx) “Smith Inclusion Agreement” shall have the meaning set forth in Section 8 below.

(yyy) “Smith Mill Levy Ten” shall mean an ad valorem mill levy in the amount of ten (10) mills to be imposed upon the property within or to be included within the boundaries of the Smith Districts pursuant to the Smith Inclusion Agreement and as more particularly defined in the PIRA.

(zzz) “Smith No. 1” shall have the meaning set forth in the Recitals.

(aaaa) “Smith Pledge” shall have the meaning set forth in Section 8 below.

(bbbb) “Smith Share” shall have the meaning set forth in Section 7(a) below.

(cccc) “SMT” means SMT Investors Limited Partnership, AN and DC Irrevocable Trust, San Isidro Six Investments, LLC, SCM-Neal, LLLP, SCM-Whiteman, LLLP, SCM-Zaharis LLLP, SCM-Pendleton LLLP, SCM-Wilson LLLP, SCM-D Hat LLLP, SCM-Lasky LLLP, SCM-Spectrum, LLLP, SCM-POT LLLP, SCM-Wayne, LLLP and SCM-KDL LLLP.

(dddd) "SMT Inclusion Agreement" shall have the meaning set forth in Section 8 below.

(eeee) "Station Area Improvements" means the rail station drop off, ticketing and waiting area on the DIA Property and within the Pena Station Area.

(ffff) "Station Parking Lot" means the 800 space parking lot to be located on the DIA Property and within the Pena Station Area.

(gggg) "Title Company" shall mean Land Title Guarantee Company.

(hhhh) "Total Proportionate Share" shall have the meaning set forth in Section 7(e) below.

(iiii) "Uncontrollable Event" shall have the meaning set forth in Section 14 below.

(jjjj) "Working Day" shall mean a day in which the offices of the City and County of Denver are open and operating.

3. **Term.** This Agreement shall commence upon the Effective Date and shall continue through and until Final City Acceptance of the Aviation Constructed 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 Aviation Constructed Improvements.

4. **Pena Station Area Obligations.**

(a) **Aviation Constructed Improvements.** The Parties agree that Aviation No. 1 shall undertake the design, construction and installation of all of the Aviation Constructed Improvements, subject to: (i) the funding obligations of DIA as set forth herein; (ii) the funding obligations of Smith as set forth in the Aviation/Smith IGA; (iii) the Closing of the MidFirst Loan; (iv) the funding of Developer advances, including, but not limited to, any equity amounts of the Developer pursuant to the Development Agreement; and (v) the receipt of proceeds from a loan made by the General Contractor to Aviation No. 1 in the amount of \$2,500,000 (the "General Contractor Loan").

(b) **RTD Station Work.** The Parties acknowledge that on March 5, 2014, DIA gave notice to proceed to Regional Transportation District ("RTD") for commencement of the RTD Station Work and that RTD is coordinating design and construction of the RTD Station pursuant to the Second Amendatory Agreement to Intergovernmental Agreement for Fastracks East Corridor/Denver International Airport of even date herewith. The Parties acknowledge their mutual goal of having Pena Station fully operational and open within nine (9) months of the Anticipated Opening Date. DIA shall be solely responsible for initially funding the reimbursement to RTD for the costs of the RTD Station Work subject to reimbursement pursuant to the PIRA. The Parties shall use reasonable business efforts to cooperate and coordinate with RTD and its contractors to ensure that timely funding, construction and completion of the Aviation Constructed Improvements occurs and permits Pena Station to open for revenue service



within nine (9) months of the Anticipated Opening Date. The Parties acknowledge, however, that the actual opening date depends upon factors not completely controlled by either Party. As such, neither of the Parties can guarantee a date certain for the Pena Station opening date. Nothing contained herein shall be interpreted as creating any obligations as between RTD and Aviation No. 1 and the City acknowledges that all contract documents relating to the Pena Station are between the City and RTD, or a party acting on behalf of RTD.

(c) **Future Improvements.** The Parties acknowledge and agree that this Agreement pertains to the Aviation Constructed Improvements only. However, the Parties agree to use reasonable efforts to agree on the infrastructure required for future phases of the Pena Station Area build out, and the proportional sharing of the costs associated with such infrastructure. Cost sharing generally shall be based on the approximate value received by the Aviation Property and/or the DIA Property of the improvement to land within the Pena Station Area. This provision expressly survives termination of this Agreement.

5. **Aviation Constructed Improvements Design.** The Parties acknowledge and agree that Aviation No. 1 will engage an engineer licensed in the State of Colorado, (the "Project Engineer") for the design of the Aviation Constructed Improvements. The design drawings, plans and specifications for the Aviation Constructed Improvements ("Plans and Specifications") will be provided by Aviation No. 1 to DIA at least ten (10) Working Days prior to the date Aviation No. 1 intends to submit the same to the City and/or other applicable governmental agency for processing. If DIA does not object in writing to the Plans and Specifications within said ten (10) Working Day period, with any objections stated with specificity, then the Plans and Specifications shall be deemed approved and Aviation No. 1 shall be entitled to submit the same to the City and/or other applicable governmental agency. The Plans and Specifications shall 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 submittal to the City and/or applicable governmental agency, the City and/or applicable governmental agency requires any modifications (each, a "City Requested Change"), Aviation No. 1 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, DIA shall be deemed to have approved the same. Aviation No. 1 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.

6. **Contracting / Construction.** Aviation No. 1 shall complete the Plans and Specifications to a level sufficient to advertise for bids or contract under a design/build or other appropriate contracting form to complete the Aviation Constructed Improvements. It is anticipated that Aviation No. 1 will select either a construction manager general contractor or a design/build/financer to serve as general contractor (the "General Contractor"). Prior to execution of a contract with the General Contractor (the "GC Contract"), which GC Contract shall be awarded on a guaranteed maximum price basis, Aviation No. 1 will provide DIA with a proposed budget (the "Budget") for the Aviation Constructed Improvements together with bid packages for each portion of the Aviation Constructed Improvements (each, a "Bid Package") that will be subcontracted by the General Contractor.

It is anticipated that the Budget and responses to each Bid Package will serve as the basis for a guaranteed maximum price for the GC Contract. Aviation No. 1 shall provide DIA with all proposed Bid Packages at least ten (10) Working Days prior to the date that Aviation No. 1 intends release or cause the General Contractor to release such Bid Package for publication. If DIA does not object in writing to a proposed Bid Package within said ten (10) Working Day period, with such objection stated with specificity, DIA shall be deemed to have approved the same and Aviation No. 1 and the General Contractor shall be entitled to publish the same. Aviation No. 1 shall also provide DIA with a copy of: (i) the proposed GC Contract; and (ii) the standard subcontract form to be used by the General Contractor. DIA shall have ten (10) Working Days following receipt of the form of GC Contract and the standard subcontract form to object to the same, with such objections stated with specificity. If DIA does not object to either the GC Contract or the standard subcontract form within said ten (10) Working Day period, the same shall be deemed approved (the "Approved Contract Form"). Aviation No. 1 shall cause the General Contractor to deliver to DIA upon receipt, a summary spreadsheet of all bids received for each Bid Package together with a recommendation as to the subcontractor to whom the Bid Package will be awarded. DIA shall have ten (10) Working Days to review the bids and the recommendation of award for each Bid Package. If DIA does not object or comment with respect to the recommended award for a BID Package within said ten (10) Working Day period, Aviation No. 1 and the General Contractor shall have the right to award the subcontract for the particular Bid Package which subcontract shall be materially the same as the Approved Contract Form. To the extent any such subcontract materially differs from the Approved Contract Form (each, a "Materially Different Form"), DIA shall have the right to review and approve such Materially Different Form. If DIA does not object to the Materially Different Form within ten (10) Working Days following receipt of the same, the same shall be deemed approved. Following receipt of all bids solicited pursuant to Bid Packages, Aviation No. 1 shall inform DIA in writing of the guaranteed maximum price of the GC Contract. If DIA does not object to the same within ten (10) Working Days following receipt, Aviation No. 1 shall be entitled to execute the GC Contract. In the event of an objection set forth in this Section, the Parties agree to submit the same to the Expedited Dispute procedure set forth below. The GC Contract together with any subcontracts issued thereunder shall be referred to herein as the "ACI Documents."

Aviation No. 1 shall construct and complete the Aviation Constructed Improvements in accordance with the Plans and Specifications. Any significant deviation from or modification to the Plans and Specifications in completing the Aviation Construction 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 Aviation Constructed 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 Aviation No. 1. 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 11(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 Aviation

Constructed Improvements subject to insurance requirements and construction necessitated restrictions as deemed reasonable by the contractor(s) of the Project.

(a) **Procedure.**

(i) **Construction Contract Requirements.** The ACI Documents shall require the contractors 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 ACI Documents. In addition, the ACI Documents shall provide that they are assignable and/or may be used by the City in the event the City elects to deliver an Assumption Notice in the event of an Event of Default. Prior to deposit of the DIA Share to the DIA Construction Account as defined in Section 7 below, the City shall receive from Aviation No. 1 the document to be used to evidence the City's assumption of rights described in Section 10(b) below in a form and substance acceptable to the City and the GC. Aviation No. 1 shall provide DIA with a copy of the ACI Documents, including any and all change orders, addendum or other modifying documentation, as soon as available.

(ii) **Approval of Costs.** The Parties agree that the total estimated Costs (defined below) associated with the funding, design and construction of the Aviation Constructed Improvements is \$38,189,672 ("Estimated Construction Cost"). 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 Aviation Constructed 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 Aviation Constructed Improvements, engineering services required to obtain a permit for and complete the Aviation Constructed Improvements, costs of compliance with all applicable laws, costs of insurance, costs of financial assurances, actual and reasonable costs of obtaining and documenting the agreements relating to the funding of the Aviation Constructed Improvements including, but not limited to, the MidFirst Loan and the General Contractor Loan and Developer equity, and allowable interest and financing costs for the MidFirst Loan only, 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 Aviation Constructed Improvements, any warranty work, and any other costs incurred in connection with the performance of the obligations of Aviation No. 1 hereunder to complete the Aviation Constructed Improvements.

(iii) **Periodic Reports.** Commencing on the award of the first Bid Package, Aviation No. 1 will provide periodic reports to DIA, on the fifth (5<sup>th</sup>) Working Day of each month, which periodic report shall include the status of completion and costs of the Aviation Constructed Improvements.

(iv) **Pre-Construction Meeting/Interim Inspections.** Following award of the ACI Documents, Aviation No. 1 shall schedule a pre-construction meeting with the General Contractor. Aviation No. 1 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 Aviation No. 1 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.

(b) **Walk-Through and Punch List.** Aviation No. 1 shall notify DIA prior to final completion of the Aviation Constructed Improvements, with the date(s) and time(s) the City will inspect the Aviation Constructed Improvements. Within ten (10) days after receipt by DIA of such notice from Aviation No. 1, Aviation No. 1 and DIA shall jointly inspect the Aviation Constructed 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. Aviation No. 1 shall provide DIA with copies of any inspection reports or punchlists received from the City in connection with the inspection of the Aviation Constructed Improvements and Aviation No. 1 shall be responsible to correct punchlist items from the City and those contained on the Joint Punchlist. If the City grants preliminary acceptance regarding Aviation Constructed Improvements that it will accept for maintenance, it shall conclusively be presumed that such Aviation Constructed Improvement was completed in accordance with this Agreement, subject to completion of any punchlist items provided by the City.

(c) **Correction of Joint Punchlist Items.** Aviation No. 1 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.

(d) **Initial and Final Acceptance.** Aviation No. 1 shall provide DIA with prior notice of its intent to seek preliminary acceptance of the Aviation Constructed Improvements from the City. For purposes of processing final draws on the Construction Accounts, DIA shall accept the Aviation Constructed 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 Aviation No. 1 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.

DIA may, in its discretion, waive any of the foregoing conditions as to the Initial City Acceptance of the Aviation Constructed Improvements. Aviation No. 1 shall be responsible, at its sole cost and expense, for the maintenance of the Aviation Constructed Improvements until such time as they have been finally accepted by and conveyed to the City (“Final City Acceptance”), in accordance herewith.

(e) **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 Aviation No. 1. Further, DIA, Aviation No. 1 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 Aviation No. 1 shall work cooperatively and in good faith to enter into an intergovernmental agreement (the “Operations IGA”) prior to completion of the Aviation Constructed Improvements which Operations IGA will determine the operations and maintenance obligations for those improvements set forth on **Exhibit D** attached hereto and incorporated herein by reference (the “O&M Matrix”). DIA and Aviation No. 1 acknowledge that the improvements set forth on the O&M Matrix may not be complete and that following execution hereof, additional improvements may be identified that will be included within the Operations IGA.

(f) **Assignment of Warranties.** Upon Initial City Acceptance of the Aviation Constructed Improvements, for any Aviation Constructed Improvements located on DIA Property or for which DIA will have operations and maintenance responsibility as may be determined in the Operations IGA, Aviation No. 1 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. Aviation No. 1 shall be responsible for obtaining any contractor consents, if necessary, to effectuate such assignment. Notwithstanding the foregoing, if Aviation No. 1 is required to perform any warranty repairs to Aviation Constructed Improvements following Initial City Acceptance, the City shall cooperate with Aviation No. 1 to enforce any such warranties and/or guarantees that have been assigned.

## 7. **Funding for Design and Construction Costs.**

(a) **Initial Funding Obligation.** Based on the Estimated Construction Cost less the MidFirst Loan and the Aviation Pre-Development Costs, as itemized on **Exhibit C** attached hereto, the initial funding obligation for Aviation No. 1 will be \$9,500,000 (“Aviation Share”); the initial funding obligation for Smith No. 1 will be \$3,200,000 (“Smith Share”) and the initial funding obligation for DIA will be \$19,649,672 (“DIA Share”).

(b) **Respective Draw Request Percentage Shares.** DIA and Aviation No. 1 hereby agree that based upon DIA’s and Aviation No. 1’s Total Proportionate Share, each Draw Request shall be borne by DIA, Aviation No. 1 and Smith in the following percentages: Aviation No. 1: 26.14% (“Aviation Draw %”); Smith No. 1: 8.80% (“Smith Draw %”); and DIA: 54.06% (“DIA Draw %”).

(c) **Initial Funding of Shares.** On the Closing Date the Aviation Share, DIA Share and Smith Share shall be funded as follows:

(i) **Aviation Share.** Aviation shall cause the Aviation Share to be funded into a separate interest bearing account with the Bank (the “Aviation Construction Account”). The Parties acknowledge that the Aviation Share will consist of the General Contractor Loan and funds advanced by the Developer, including, but not limited to, Developer equity amounts as described in the Development Agreement.

(ii) **Smith Share.** The Smith Share to be deposited into a separate account at the Bank (the “Smith Construction Account”) pursuant to the Aviation/Smith IGA.

(iii) **DIA Share.** DIA shall deposit the DIA Share into a separate account at the Bank (the “DIA Construction Account” and collectively with the Aviation Construction Account and the Smith Construction Account, the “Construction Accounts”).

(d) **Construction Funds Administrator.** DIA and Aviation No. 1 hereby appoint and designate the Bank as the entity to hold and disburse funds from the Construction Accounts for payment of the Costs. Upon the Closing Date, the City and Aviation No. 1 shall execute a construction disbursing agreement with the Bank, Title Company, Smith No. 1 and the Developer (the “Construction Disbursing Agreement”) which Construction Disbursing Agreement shall govern the procedure for the processing and payment of periodic Draw Requests (hereinafter defined) hereunder.

(e) **Cost Increases.** The GC Contract will require the General Contractor to notify Aviation No. 1 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 Party Directed Change (each, a “Cost Increase”), DIA and Aviation No. 1 shall: (a) agree to the allocation and funding of such Cost Increase; or (b) agree to a reduction in the scope of the Aviation Constructed Improvements such that there is sufficient funds in the Construction Accounts to obtain Final City Acceptance for all Aviation Constructed Improvements (as the scope may be reduced) constructed hereunder. Within three (3) Working Days of receipt of a Cost Increase Notice, DIA and Aviation No. 1 shall meet and in good faith attempt to agree upon the nature, scope and allocation of such Cost Increase. If within ten (10) Working Days following receipt of a Cost Increase Notice, DIA and Aviation No. 1 are unable to agree upon the allocation and funding of the same or a reduction in scope, then DIA and Aviation No. 1 agree that the General Contractor may be directed to stop work until the same is resolved pursuant to the Expedited Resolution Procedure contained in Section 11(f) below.

(i) Notwithstanding the foregoing, if either DIA or Aviation No. 1 (as, applicable, the “Requesting Entity”) requests a change of scope that increases the costs of the Aviation Constructed Improvements and which change in scope is not requested by the contractor or necessary to comply with applicable laws; (a “Party Directed Change”), the Requesting Entity shall be responsible for 100% of the Cost Increase associated therewith, which amount must be funded into such Requesting Entity’s Construction Account prior to Aviation No. 1 being obligated to either include such work within the ACI Documents and/or process a change order to the ACI Documents to include such Party Directed Change, as the case may be. Aviation No. 1 shall cause the ACI Documents to require the contractor to provide notice to DIA and Aviation No. 1 of any Cost Increase and each line item that has been increased following receipt of the bids for the ACI Documents and following award of the ACI Documents.

(f) **Periodic Draws.** Aviation No. 1 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 ACI Constructed Improvements from the Construction Accounts and from the MidFirst Loan pursuant to the terms and conditions of the Construction Disbursing Agreement.

(g) **Objection.** Any portion of a Draw Request that DIA does not disapprove by written notice to Aviation No. 1 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 Construction Disbursing Agreement. DIA shall deliver written notice of any objection pursuant to the preceding sentence to Aviation No. 1 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 Aviation No. 1 timely receives an Objection Notice, then, DIA and Aviation No. 1 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.

(h) **Final Payment.** Promptly, but in any event not more than sixty (60) days following Initial City Acceptance, Aviation No. 1 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 construction contracts.

(i) **Accounting.** Aviation No. 1 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, Aviation No. 1 shall deliver to DIA a reasonably detailed final accounting of the Costs.

## 8. **Reimbursement of DIA Funding Obligation.**

(a) **Project Improvements Reimbursement Agreement.** DIA is providing Seventeen Million and 00/100ths Dollars (\$17,000,000) to fund those certain improvements within the Pena Station Area described in the PIRA (the “DIA Funding Obligation”). In consideration of the DIA Funding Obligation, Aviation No. 1 and Smith No. 1 jointly and severally agree to reimburse DIA by incurring obligations under the PIRA which include *inter alia* the obligation to impose the Aviation Station Mill Levy Ten and Smith Mill Levy Ten on the real property contained within each district’s boundaries and remit the same to the custodian pursuant to the custodial agreement (the “Custodial Agreement”) executed concurrently herewith by and among DIA, Aviation No. 1, Smith No. 1 and UMB Bank, n.a. There is currently de minimus real property contained within each of Aviation No. 1 and Smith No. 1. However, Aviation No. 1 has entered into an inclusion agreement with Developer (the “Developer Inclusion Agreement”) which requires the Developer to include the Developer Property into an

Aviation District upon the occurrence of certain events. Smith No. 1 has also entered into an inclusion agreement with the Estate of Karl D. Smith (the “Smith Inclusion Agreement”) that requires the Smith Property to be included within one of the Smith Districts upon the occurrence of certain events as described in the Smith Inclusion Agreement. Each of the Developer Inclusion Agreement and Smith Inclusion Agreement may be referred to herein as an “Inclusion Agreement” and collectively, “Inclusion Agreements.” The PIRA provides that if real property is included within an Aviation District or a Smith District (as, applicable, an “Including District”) that such Including District must execute a pledge agreement (each, an “Aviation Pledge” or “Smith Pledge,” as applicable) that requires such Including District to impose the Aviation Station Mill Levy Ten or Smith Mill Levy Ten and remit the same to the custodian pursuant to the Custodial Agreement. Smith No. 1 and Aviation No. 1 both agree to enforce this obligation against the landowners within each of their service areas and the other Smith Districts and Aviation Financing Districts, as applicable and each Inclusion Agreement will name DIA as a third-party beneficiary with enforcement rights in the event Smith No. 1 and Aviation No. 1 fail to enforce such obligations.

(b) **SMT Inclusion.** The Parties acknowledge that as of the date hereof, Aviation No. 1 has not entered into an inclusion agreement with SMT and that negotiations are on-going with SMT. SMT may execute an inclusion agreement and upon such execution, Aviation No. 1 agrees to enforce the same.

(c) **Additional PIRA.** DIA is also providing Three Million and 00/100ths Dollars (\$3,000,000) to fund those certain storm drainage improvements within the Pena Station Area described in the Additional PIRA (the “Additional Improvements”). In consideration of DIA funding the Additional Improvements, Aviation No. 1 agrees to reimburse DIA by incurring obligations under the Additional PIRA which include *inter alia* the obligation to impose the Aviation Station Mill Levy Three on the real property contained within Aviation No. 1’s and the Aviation Financing Districts’ boundaries and remit the same to DIA. There is currently de minimus real property contained within Aviation No. 1. The Additional PIRA provides that if real property is included within an Aviation District (as, applicable, an “Including District”) that such Including District must execute a pledge agreement (each, an “Aviation Pledge”) that requires such Including District to impose the Aviation Station Mill Levy Three and remit the same to DIA. Aviation No. 1 agrees to enforce this obligation against the landowners within its service area and the Aviation Financing Districts, as applicable and each Inclusion Agreement will name DIA as a third-party beneficiary with enforcement rights in the event Aviation No. 1 fails to enforce such obligations. Notwithstanding the foregoing, the Parties acknowledge, that the obligations created pursuant to the Additional PIRA shall not apply to either the Smith Property or the SMT Property.

9. **Easements/Licenses.** The City agrees to grant to Aviation No. 1 and its construction contractors a temporary, non-exclusive license to enter upon the DIA Property as reasonably necessary for the installation of the Aviation Constructed Improvements and/or the performance of Aviation No. 1’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. For



improvements that will be maintained by Aviation No. 1 following their completion, DIA and Aviation No. 1 shall agree upon a form of license or easement to be executed pursuant to the Operations IGA.

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

(a) **Notice of Default.** If Aviation No. 1: (i) breaches its obligation under this Agreement to complete or cause the completion of the Aviation Constructed Improvements in accordance with the Plans and Specifications; (ii) otherwise breaches any material obligation under this Agreement; (iii) fails to comply with any material provision of the ACI Documents beyond any applicable express notice or cure periods; or (iv) the Bank ceases to advance funds under the Midfirst Loan, then, for purposes of this Agreement, the occurrence of any of the events in 10(a)(i)-(iv) shall be referred to herein as an “Event of Default.” Aviation No. 1 shall provide written notice to the City and the Bank of the occurrence of any Event of Default. The City acknowledges that the Bank shall have the first right to assume and take over the construction of the Aviation Constructed Improvements pursuant to the First Loan Documents. Aviation No. 1 shall provide written notice to the City and DIA of the Bank’s determination, if the Bank so determines, to not assume and take over the construction of the Aviation Constructed Improvements (the “Bank Non-Assumption Notice”). If Aviation No. 1 delivers a Bank Non-Assumption Notice pursuant to the First Loan Documents within the time period provided in the First Loan Documents, then the City may assume and take over the construction of the Aviation Constructed Improvements by providing written notice to Aviation No. 1, the Bank and Smith No. 1 of its election (the “Assumption Notice”) within thirty (30) days of receipt of the Bank Non-Assumption Notice. The City’s assumption of the construction of the Aviation Constructed 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 on or before thirty (30) days after receipt of the Bank Non-Assumption Notice, then the City shall be deemed to have waived its rights pursuant to this Section with respect to the applicable Event of Default by Aviation No. 1.

(b) **Assumption Right.** If the City delivers an Assumption Notice, then: (i) Aviation No. 1 shall cooperate to allow the City to take over and complete the incomplete Aviation Constructed 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 ACI Documents pertaining to the Aviation Constructed Improvements; (ii) the City shall be entitled to make draw requests on the MidFirst Loan with the approval of the Developer and MidFirst; and (iii) Aviation No. 1 shall be relieved of all further obligations under this Agreement with respect to the completion of the incomplete Aviation Constructed Improvements, including funding any Cost Increases.

11. **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 Arbitrator 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, Aviation No. 1 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 11 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 Aviation No. 1 (“Informal Arbitrator”). If DIA and Aviation No. 1 cannot agree on an Informal Arbitrator, then Aviation No. 1 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 Aviation No. 1 delivers a Dispute Notice, Aviation No. 1 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 Aviation No. 1’s Resolution Notice and shall deliver written notice of such approval to DIA and Aviation No. 1. The decision of the Informal Arbitrator shall be binding on DIA and Aviation No. 1 with respect to the applicable Expedited Dispute. DIA and Aviation No. 1 shall timely cooperate with the Informal Arbitrator in rendering his or her decision. Aviation No. 1 shall pay ½ and DIA shall pay ½ of the Informal Arbitrator’s fees. DIA and Aviation No. 1 shall each bear all of its own costs and attorneys’ fees in the resolution of the Expedited Dispute. DIA and Aviation No. 1 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 Aviation No. 1’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.

12. **Warranties.** Aviation No. 1 shall construct Improvements in a good and workmanlike manner and in substantial compliance with the Plans and Specifications and the ACI Documents and requirements of this Agreement.

13. **Time of Performance.** Upon the Effective Date, Aviation No. 1 shall diligently pursue design, award of ACI Documents, and prosecution of construction of the Aviation Constructed Improvements through completion. Subject to Force Majeure, DIA and Aviation No. 1 anticipate that the Aviation Constructed Improvements will be substantially complete by the date that is nine (9) months following the Anticipated Opening Date, unless otherwise agreed to in writing by both DIA and Aviation No. 1.

14. **Force Majeure.** The completion date and all other dates set forth in any construction schedule and the time for performance by Aviation No. 1 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 Aviation Constructed 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 Aviation No. 1’s reasonable control (each, an “Uncontrollable Event”). Notwithstanding the

foregoing, delay caused by Aviation No. 1's failure to pay amounts it owes under this Agreement or that are otherwise due and payable by Aviation No. 1 relating to this Agreement or the Aviation Constructed 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.

15. **Representations.** Both Aviation No. 1 and DIA hereby represent they have sufficient funds available and appropriated for the purposes of satisfying their obligations hereunder.

16. **Remedies.** Subject to DIA's assumption right as set forth above and the provisions contained in Section 11 above, DIA and Aviation No. 1 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.

17. **Certification of Compliance with Illegal Alien Statute.** By its execution hereof, Aviation No. 1 confirms that it requires all contractors providing services for the Aviation Constructed 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 ACI Documents, 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.

18. **M/WBE and Prevailing Wage Compliance.** Aviation No. 1 hereby confirms that in its performance of the design and construction of the Aviation Constructed Improvements, Aviation No. 1 will comply with all M/WBE program requirements and prevailing wage requirements of the City.

19. **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.

Aviation No. 1:	Aviation Station North Metropolitan District No. 1 c/o Special District Management Services, Inc. 141 Union Boulevard, Suite 150 Lakewood, Colorado Attn: Lisa Johnson
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With a Copy to:

McGeady Sisneros, P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Attention: MaryAnn McGeady

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

20. **Appropriation.** Pursuant to Section 29-1-110, C.R.S., any financial obligations of Aviation No. 1 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.

21. **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.

22. **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.

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

24. **No Third Party Beneficiaries.** Other than Smith No. 1, which shall be considered a third-party beneficiary of all rights and obligations hereunder, 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. As a third-party beneficiary of this Agreement, DIA and Aviation No. 1 hereby agree that they shall not materially amend any term of this Agreement without obtaining Smith No. 1's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, in the event DIA delivers any Objection Notice as provided above, DIA agrees to provide a copy to Smith No. 1 and the Parties agree to inform Smith No. 1 upon resolution of any such Dispute.

25. **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.

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

27. **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.

28. **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.

29. **Non-Discrimination in Employment.** In connection with the performance of work under this Agreement, Aviation No. 1 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. Aviation No. 1

shall cause the foregoing to be inserted in the GC Contract and cause the General Contractor to include the same in all subcontracts.

30. **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 Aviation No. 1, 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.

31. **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.

32. **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]**

Exhibit list

Exhibit A	Pena Station Area (including DIA Property, Developer Property, SMT Property and Smith Property)
Exhibit B	Aviation Constructed Improvements
Exhibit C	Aviation Pre-Development Costs
Exhibit D	O&M Matrix



# EXHIBIT A

Pena Station Area (including DIA Property, Developer Property, SMT Property and Smith Property)

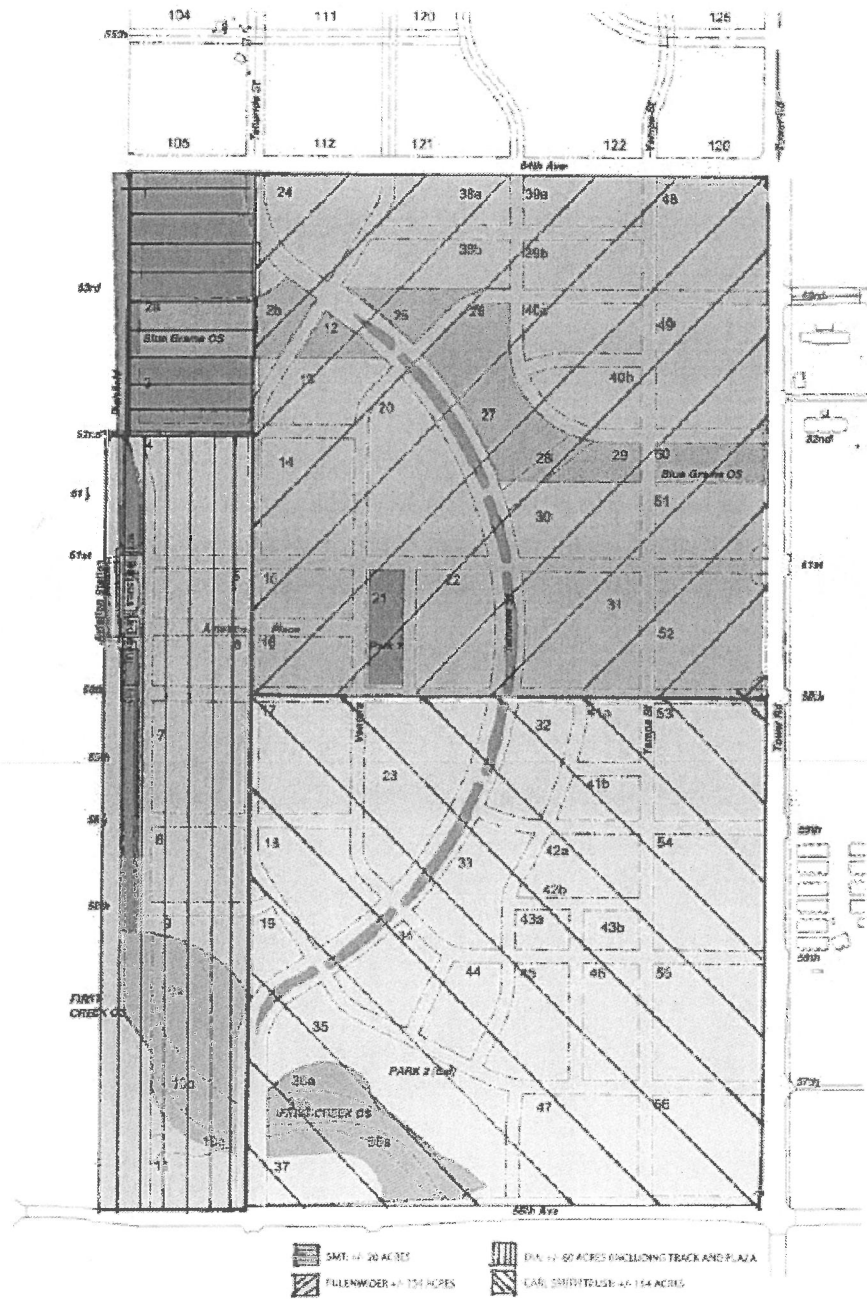


EXHIBIT A – PENA STATION AREA

## EXHIBIT B

### Aviation Constructed Improvements

- A drop off, ticketing, waiting area and plaza adjacent to the RTD commuter rail station platform;
- All landscaping, ticketing devices, signage, project art, security cameras, lighting, and other appurtenances and amenities associated with the drop off, ticketing, waiting area, and plaza;
- An 800 space hard surface parking lot serving the RTD station and surrounding station area including all parking control; security; and landscaping as necessary to serve to the parking lot;
- All wet and dry utilities and water quality management required to serve the RTD commuter rail station platform; the drop off, ticketing, waiting, and plaza area; and the parking lot.
- A sanitary sewer lift station and a pressurized sanitary sewer line to allow sewer flows to be pumped from the station area to adjacent City sanitary lines;
- A gravity fed sanitary sewer collection lines and main flow lines to serve the station area;
- 60<sup>th</sup> Avenue road improvements from back of curb to back of curb from Tower Road west to Richfield;
- 61<sup>st</sup> Avenue road improvements from Tower Road west to Richfield Street;
- Improvements to Tower Road at 60<sup>th</sup> and 61<sup>st</sup> Avenues including a traffic light at 61<sup>st</sup> Avenue;
- Salida Street road improvements from 61<sup>st</sup> Avenue to Blue Grama Gulch;
- Ventura Street road improvements from 60<sup>th</sup> Avenue to Blue Grama Gulch;
- Richfield Street road improvements from 60<sup>th</sup> Avenue to the parking lot entrance north of 61<sup>st</sup> Avenue;
- Potable water lines in all road sections with connections to the City water system as appropriate;
- A non-potable water system designed to provide service to all major open space areas, to be connected to the City non-potable water system when available;
- Storm water collection mains in all road sections with connections to the Blue Grama regional water quality management areas and storm water channel;
- Some portion of the Blue Grama water quality management area and storm water channel;
- Some portion of Aviation Park;
- Electronic signage devices placed in the plaza, Aviation park, and certain areas behind curb in the station area;
- An entry monument at 61<sup>st</sup> Avenue;
- Conduit to accommodate such devices and provide communication capacity to wi-fi and security devices throughout the station area;

- All first phase project art;
- Relocation of a liquids pipeline to eliminate interference with project infrastructure;

All financing; legal; engineering; surveying; materials testing; project management; construction management costs applicable for the project plus a project contingency amount.

## EXHIBIT C

### Aviation Pre-Development Costs

April 13, 2015

Planning, Engineering, Design, City Fees	\$	1,243,876
Project Consulting	\$	242,500
Marketing and Branding	\$	141,389
Project Legal	\$	220,827
Metro District Legal	\$	227,459
Financing	\$	15,010
PAID PRE-DEVELOPMENT COSTS	\$	<u>2,091,061</u>
To be reimbursed at First Draw	\$	<u>(251,061)</u>
TOTAL PRE-DEVELOPMENT COSTS	\$	<u><u>1,840,000</u></u>

Amount of Paid Pre-Development Costs will increase before closing thereby increasing the amount to be reimbursed at First Draw.

## EXHIBIT D

### O&M Matrix

**RTD:** Regional Transportation District

**City:** City and County of Denver

**DIA:** Denver International Airport

**D1:** Aviation Station North Metropolitan District No. 1

**RS:** Rail Stop

**TBD:** To Be Determined

**\*:** Not Applicable

DESCRIPTION	ENTITY WHICH CONSTRUCTS	ENTITY WHICH OWNS IMPROVEMENTS	ENTITY WHICH CONTRACTS FOR MAINTENANCE	ENTITIES WHICH COST SHARE MAINTENANCE
Station Platform	RTD			*
Plaza and Platform	D1			
Station Parking – 800 surface spaces	D1			
Aviation Park – North Half	D1			
Blue Grama Open Space	D1			
Street Sections on RS, Smith and SMT Property	D1			*
Street Sections on DIA Property	D1			*
60 <sup>th</sup> Ave. from Tower Road to platform	D1			*
61 <sup>st</sup> Ave. from Tower Road to platform	D1			*
Salida Street from 61 <sup>st</sup> Ave. to Blue Grama	D1			*
Ventura Street from 60 <sup>th</sup> Ave. to Blue Grama	D1			*
Richfield from 60 <sup>th</sup> Ave. to 61.5 <sup>st</sup> Ave.	D1			*
Street Landscape/Sidewalks	D1			*
Water Utilities in street on RS, Smith and SMT Property	D1			*
Sanitary Sewer Utilities in street on RS, Smith and SMT Property	D1			
Extensions from Core – Combined Streets and Water Utilities on Rail Stop Land	D1			*
Extensions from Core – Combined Streets and Sanitary Sewer Utilities on Rail Stop Land	D1			
Water Utilities in street on DIA Property	D1			*

DESCRIPTION	ENTITY WHICH CONSTRUCTS	ENTITY WHICH OWNS IMPROVEMENTS	ENTITY WHICH CONTRACTS FOR MAINTENANCE	ENTITIES WHICH COST SHARE MAINTENANCE
Sanitary Sewer Utilities in street on DIA Property	D1			
Sewer Lift Station and Force Main	D1			*
Blue Grama – Storm Sewer	D1			
Way finding and informational signage	D1			
Conduit/Communication/Data	D1			
Public Art	D1			

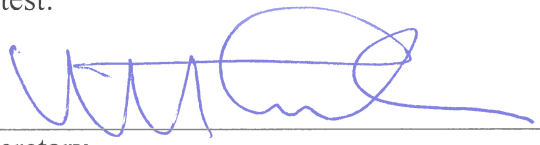
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

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

By:

  
Ferdinand Belz III, President

Attest:

  
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 \_\_\_\_\_

