

FIRST AMENDMENT TO FUNDING AND ASSIGNMENT AGREEMENT

THIS FIRST AMENDMENT TO FUNDING AND ASSIGNMENT AGREEMENT (“**First Amendment**”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **URBAN PEAK DENVER**, a Colorado nonprofit corporation with an address of 2100 Stout Street, Denver, Colorado 80205 (“**Urban Peak**”), and **THE PEAK, INC.**, a Colorado nonprofit corporation intended to be a special purpose entity related to the Project (as defined in the Original Agreement, which is further defined below in Recital A) (“**SPE**”), individually a “**Party**” and collectively the “**Parties.**”

RECITALS:

A. The Parties entered into that Funding and Assignment Agreement executed on or about January 9, 2023 (the “**Original Agreement**”) for the performance of certain work as set forth in the Original Agreement and the exhibits incorporated therein; and

B. The City is in the midst of a homelessness crisis and the City’s provision of the “**Proceeds,**” as that term is defined in the second Recital of the Original Agreement, to Urban Peak in exchange for Urban Peak’s undertaking and operation of the Project shall serve an important public purpose in helping to benefit and secure the health, safety, and welfare of the City’s residents.

C. Since the execution of the Original Agreement, costs associated with the Project have increased, and the City wishes to add an additional Seven Hundred Thousand Dollars (\$700,000) to the Proceeds to offset those costs and help ensure the success of the Project.

D. The Parties desire to revise the terms and conditions to: 1) increase the amount of the Proceeds by Seven Hundred Thousand Dollars (\$700,000.00); 2) replace **Exhibit A-1** to the Original Agreement with the updated **Exhibit A-1A** attached hereto and incorporated herein; 3) replace **Exhibit B-1** to the Original Agreement with the updated **Exhibit B-1A** attached hereto and incorporated herein; and 4) make such other amendments to the Original Agreement to bring it into conformance with current Denver Revised Municipal Code requirements and City contracting requirements, all for the purpose of business continuity.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. All capitalized terms otherwise undefined in this First Amendment shall have the meaning ascribed to them in the Original Agreement.

2. The second Recital of the Original Agreement is hereby deleted and replaced in its entirety with the following:

“**WHEREAS**, Urban Peak intends to complete the construction of a shelter structure that will include at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition-age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition-age youth (“**Shelter Facility**”) located at 1630 South Acoma Street, Denver Colorado (the “**Property**”) and the City desires to make a part of the proceeds, totaling an amount not to exceed Seventeen Million, Four Hundred and Sixty-Four Thousand, Five Hundred and Sixty-Seven Dollars and No Cents (\$17,464,567.00) of the Bonds (the “**Proceeds**”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below and in **Exhibit A**, as attached hereto and incorporated herein (the “**Project**”), in accordance with the terms and conditions of this Agreement; and”

3. **Exhibit A-1**, as attached to the Original Agreement, shall be replaced in its entirety with the updated **Exhibit A-1A**, as attached hereto and incorporated herein by reference.

4. **Exhibit B-1**, as attached to the Original Agreement, shall be replaced in its entirety with the updated **Exhibit B-1A**, in substantially-final form as attached hereto and incorporated herein by reference. It shall be an express condition precedent to the City’s delivery of the additional Seven Hundred Thousand Dollars (\$700,000) of Proceeds described herein that the City and Urban Peak shall mutually execute the updated Shelter Operating Agreement, subject to any non-material revisions as may be mutually agreed upon, attached as **Exhibit B-1A**.

5. A new Section 38 shall be incorporated into the Original Agreement with the following:

“38. **Compliance with Denver Wage Laws.** To the extent applicable to Urban Peak’s provision of services hereunder, Urban Peak shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage

and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. sections. By executing this Agreement, Urban Peak expressly acknowledges that Urban Peak is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by Urban Peak, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. sections shall result in the penalties and other remedies authorized therein. Urban Peak shall insert the foregoing provision in all subcontracts.”

6. Except as herein amended, the Original Agreement continues in effect, and is affirmed and ratified in each and every particular.

7. This First Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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[SIGNATURE PAGES TO FOLLOW]

**Urban Peak Denver d/b/a Urban Peak,
a Colorado non-profit organization**

By: Christina Carlson

Name: Christina Carlson

Title: Chief Executive Officer

**The Peak, Inc.,
a Colorado non-profit organization**

By: Christina Carlson

Name: Christina Carlson

Title: Chairman of the Board

City Signature Page and Exhibits to Follow

Contract Control Number: HOST-202475285-01 [202265966-01]
Contractor Name: URBAN PEAK DENVER

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202475285-01 [202265966-01]
URBAN PEAK DENVER

By: See Attached Signature Pages

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A1-A

PROJECT BUDGET

Uses	Total Budget	CPF Uses	GO Bond Uses	DOLA Uses	Owner Equity Uses	NMTC Uses
Direct Construction Costs						
Land	\$ -	\$ -				\$ -
Demo	\$ 160,564.00	\$ -				\$ 160,564.00
Permits	\$ 127,332.00					\$ 127,332.00
Sewer development and water tap fees	\$ 244,756.00					\$ 244,756.00
Power/Telecom						\$ -
Utility Relocation	\$ 54,332.00					\$ 54,332.00
Architect Design	\$ 606,200.00					\$ 606,200.00
Architect Supervision	\$ 229,280.00					\$ 229,280.00
Construction costs *	\$ 27,915,118.00	\$ 3,000,000.00	\$ 17,464,567.00	\$ 3,780,000.00		\$ 3,670,551.00
FF&E	\$ 1,155,000.00					\$ 1,155,000.00
Public Art	\$ 386,175.00					\$ 386,175.00
Owner Contingency	\$ -				\$ -	\$ -
Construction testing	\$ 98,550.00					\$ 98,550.00
Builders Risk	\$ 341,173.00					\$ 341,173.00
Construction inspections	\$ 40,000.00					\$ 40,000.00
Green Building	\$ 12,500.00					\$ 12,500.00
Indirect Construction Costs					\$ -	
BLD Consultant Fee	\$ 1,311,750.00				\$ 1,311,750.00	\$ -
Urban Peak Fee	\$ 900,000.00				\$ 900,000.00	\$ -
Third Party Reports					\$ -	
Environmental Phase 1	\$ 14,279.00				\$ 14,279.00	\$ -
Appraisal	\$ 15,000.00					\$ 15,000.00
Market study	\$ 23,450.00				\$ 23,450.00	\$ -
Geotechnical Report	\$ 11,000.00				\$ 11,000.00	\$ -
Civil Engineering/ALTA	\$ 11,500.00				\$ 11,500.00	\$ -
					\$ -	\$ -
					\$ -	\$ -
Financing Costs					\$ -	
Bridge Loan Interest	\$ 660,293.00				\$ 660,293.00	\$ -
Construction loan interest after construction	\$ -				\$ -	\$ -
Bridge Loan Fee	\$ 203,397.00				\$ 203,397.00	
Underwriter Fee	\$ -				\$ -	
Negative Arbitrage Reserve	\$ -				\$ -	
Trustee Admin/Legal	\$ -				\$ -	
Bond Issuer Fees	\$ -				\$ -	
Rating Agency	\$ -				\$ -	
Verification Agent	\$ -				\$ -	
Construction loan fees	\$ -				\$ -	\$ -
Prepaid MIP	\$ -				\$ -	
Title and Recording	\$ 63,000.00				\$ 50,500.00	\$ 12,500.00
					\$ -	\$ -
Other Costs					\$ -	
Tax credit fees					\$ -	\$ -
General Liability/Umbrella	\$ 80,000.00				\$ 80,000.00	\$ -
P&P Bond	\$ 175,778.00				\$ 175,778.00	\$ -
CDE Debt Service Reserve	\$ 1,723,195.00				\$ -	\$ 1,723,195.00
Marketing	\$ -				\$ -	\$ -
Relocation	\$ 500,000.00				\$ 500,000.00	\$ -
NMTC Fees	\$ 1,161,945.80				\$ -	\$ 1,161,945.80
Legal - Bond	\$ -				\$ -	\$ -
Legal - permanent loan					\$ -	\$ -
Legal - Construction Loan	\$ 75,000.00				\$ 75,000.00	\$ -
Legal - underwriter	\$ -				\$ -	\$ -
Legal - owner	\$ 125,000.00				\$ -	\$ 125,000.00
Cost certification	\$ -				\$ -	\$ -
Soft cost contingency	\$ 488,000.00				\$ -	\$ 488,000.00
Operating reserve	\$ -				\$ -	\$ -
Lease Up Reserve	\$ -				\$ -	\$ -
Total	\$ 38,913,567.80	\$ 3,000,000.00	\$ 17,464,567.00	\$ 3,780,000.00	\$ 4,016,947.00	\$ 10,652,053.80

Credit Calculation

Eligible Basis	
Applicable Fraction	
Applicable Federal Rate	
Credit Eligible	Basis Cushion
	\$ -
Credit Awarded	
Per Unit	\$ -
Year of Credit	
Credit Percent Sold	
Credit Sales Price	
Credit Sales Proceeds	
Total Funding Required	\$ 38,913,567.80
First Mortgage	\$ -
CDOH Grant	\$ 3,780,000.00
CPF Funds	\$ 3,000,000.00
NMTC Equity	\$ 10,652,053.80
City of Denver GO Bonds	\$ 17,464,567.00
GP - Cash Flow Note	\$ -
Deferred	\$ -
Urban Peak Capital Campaign	\$ 4,016,947.00

Exhibit B-1A

**AMENDED AND RESTATED
SHELTER OPERATING AGREEMENT**

THIS AMENDED AND RESTATED SHELTER OPERATING AGREEMENT (“**Agreement**”) dated _____, 2024 is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **URBAN PEAK DENVER**, a Colorado nonprofit corporation, whose address is 2100 Stout Street, Denver, Colorado 80210 (“**Operator**”), collectively the “**Parties**” and each individually a “**Party**.”

RECITALS

WHEREAS, the qualified and registered voters of the City approved referred question 2B on November 2, 2021, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$38,600,000.00 for the purpose of financing the cost of repairs and improvements to the City’s housing and sheltering system.

WHEREAS, the City, Operator, and The Peak, Inc., a Colorado non-profit corporation (“**Peak**”), entered into a Funding and Assignment Agreement dated January 9, 2023 (“**Original FAA**”). Pursuant to the Original FAA, the City agreed to provide a part of the Bonds proceeds, originally totaling an amount not to exceed Sixteen Million Seven Hundred Sixty-Four Thousand Five Hundred Sixty-Seven Dollars and No Cents (\$16,764,567.00), to complete the construction of a structure that includes at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition youth and be a minimum of forty-one thousand twenty (41,020) square feet (the “**Shelter Facility**”), among other services and facilities, located at 1630 South Acoma Street, Denver, Colorado 80210 (the “**Property**”).

WHEREAS, subsequent to the execution of the Original FAA, (i) the Parties entered into a Shelter Operating Agreement dated March 17, 2023 (“**Original Shelter OA**”) to memorialize certain operating, maintenance and administration requirements for the Shelter Facility required by the City; and (ii) the Operator executed and recorded a Declaration of Restrictive Covenant to restrict the use of the Property for a term of sixty (60) years (“**Covenant**”), in accordance with the terms of said Covenant.

WHEREAS, the City, Operator, and Peak have agreed to amend the Original FAA to increase the funding amount by Seven Hundred Thousand Dollars and No Cents (\$700,000.00) (the “**Amended FAA**”), for a total amount not to exceed Seventeen Million Four Hundred Sixty-Four Thousand Five Hundred Sixty-Seven Dollars and No Cents (\$17,464,567.00) (the “**Proceeds**”). Collectively, the Original FAA and the Amended FAA shall be referred to herein as the “**FAA**.”

WHEREAS, as a condition of receiving the additional Seven Hundred Thousand Dollars and No Cents (\$700,000.00), the Parties must execute an Amended and Restated Shelter Operating Agreement to document the increase in the Proceeds.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Standard of Performance.** Operator must (i) operate, maintain, and manage the Shelter Facility in a lawful, satisfactory, and proper manner and (ii) perform or comply with the obligations set forth in this Agreement. Operator must faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature. The City acknowledges and agrees that Operator or an affiliate of Operator may own the Property as of the execution of this Agreement and subsequently transfer title to the Property to a special purpose entity controlled by Operator, and upon such transfer, the special purpose entity will lease the Property to the Operator for the operation and management of the Shelter Facility.

2. **Term.** This Agreement will commence as of the date the Shelter Facility is placed into service and remain in effect until the earlier of (a) the expiration or earlier termination of the Covenant, or (b) the time at which the Shelter Facility is converted in its entirety to affordable housing in accordance with the Covenant (the “**Term**”).

3. **Availability of Shelter Beds.**

3.1 Operator must provide at the Shelter Facility at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition youth.

3.2 Operator must make a minimum of eighty percent (80%) of the beds at the Shelter Facility available at any given time for shelter guests. “Available” means that a bed can be occupied by a guest and is not otherwise unavailable for occupancy due to cleaning, turnover, maintenance, or similar activities. Beds that are being cleaned or turned over when a guest vacates the Shelter Facility or is moved to another bed will be considered “available” so long as the beds being cleaned or turned over can be occupied by another guest within twenty-four (24) hours.

3.3 Operator must obtain the written approval from the Executive Director of the City’s Department of Housing Stability (“**HOST**”), or any successor agency or department of the City, prior to converting any room or area being used as non-congregate or congregate shelter within the Shelter Facility to another use.

4. **Staffing Requirements for the Shelter Facility.**

4.1 Operator must have a minimum of three (3) staff members on site and working at the Shelter Facility at all times.

4.2 Operator must employ staff that assists Shelter Facility guests with rehousing. Staff satisfying this requirement may include case managers, housing advocates, or other similar positions so long as the staff member’s responsibilities include assisting Shelter Facility guests with rehousing. Operator must have a minimum ratio of staff focusing on rehousing at the Shelter Facility as follows: if the Shelter Facility serves individuals, there must be a

minimum of 1:50 staff-to-guest ratio; if the Shelter Facility serves families, there must be a minimum of 1:40 staff-to-guest ratio; and if the Shelter Facility serves minors and transitional aged youth, there must be a minimum of 1:30 staff-to-guest ratio.

5. **Regular Reporting in Homelessness Management Information System.**

5.1 Operator must report data and information on Shelter Facility utilization and Shelter Facility outcomes in the Homeless Management Information System (“HMIS”). HOST may modify the data reporting requirements that Operator must submit into the HMIS. HOST will provide Operator with written notice at least thirty (30) days prior to modifying any HMIS reporting requirements.

5.2. It is HOST’s policy, in alignment with adopted plans, to require the use of the HMIS and OneHome for all federally and locally funded projects that have a goal of addressing the needs of residents experiencing homelessness. Metro Denver Homeless Initiative (“MDHI”) is the implementing organization for the HMIS.

5.2.1 Operator agrees to fully comply with the rules and regulations, as may be amended, required by the U.S. Department of Housing and Urban Development (“HUD”) which govern the HMIS.

5.2.2 Operator, in addition to the HUD requirements, must conform to the HMIS policies and procedures established and adopted, and as may amended or updated, by the MDHI Continuum of Care. The current policies and procedures are outlined in the COHMIS Policies and Procedures,¹ and the COHMIS Security, Privacy and Data Quality Plan.²

5.2.3 Operator’s aggregate HMIS data may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI will monitor HMIS related compliance and performance on an annual basis through a site visit. HOST will monitor program performance and contract compliance on an annual basis for the Term.

5.2.4 Technical assistance and training resources for the HMIS are available to the Operator via the COHMIS Helpdesk.³

5.2.5 HMIS data will be used to monitor this Agreement. HMIS reports may be sent to HOST directly from MDHI. Operator will also have access to all reports generated for this Agreement. HOST may request aggregate data from MDHI for City-related reporting needs.

6. **Annual Reports to HOST.**

6.1 Operator must submit an annual report to HOST on forms provide by HOST by January 31 of each year this Agreement is in effect. The submission must contain a detailed report containing the following:

¹ <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

² <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

³ <https://cohmis.zendesk.com>

- 6.1.1 Shelter Facility status report;
- 6.1.2 Compliance reports; and
- 6.1.3 Any other documentation or information required by the City.

6.2 Operator must submit to HOST by June 30th of each year this Agreement is in effect an audited financial report for the Operator and an audited financial report for the Shelter Facility. The financial reports must be in a form satisfactory to the City.

6.3 Operator acknowledges that untimely submissions of annual reports to HOST will cause the City to incur costs not contemplated by this Agreement. Such costs include, but are not limited to, additional staff time for the administration of this Agreement and to ensure compliance with the Bonds requirements. If Operator fails to timely submit a report required under this Agreement, a per-violation charge of two hundred fifty dollars and NO/100 (\$250.00) will be imposed upon the Operator, which amount shall be due and payable upon receipt of invoice by the City.

7. **Maintenance of Property; Inspections.**

7.1 Operator must maintain the Property and the Shelter Facility in accordance with the Covenant and in a manner such that all shelter units are suitable for occupancy, taking into account applicable safety and building codes, and otherwise in a manner reasonably satisfactory to HOST.

7.2 For the purpose of ensuring compliance with this Agreement and the Covenant, HOST shall have the reasonable right of access to the Property, without charges or fees, to conduct an inspection to ensure minimum health and safety standards are being met. Operator must remediate any issues or deficiencies identified by HOST within thirty (30) days of receiving written notice.

8. **Examination of Records.** Any authorized agent of the City, including the City Auditor or his or her representative, upon reasonable notice, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Operator's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Operator shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Operator to make disclosures in violation of state or federal privacy laws. Operator shall at all times comply with D.R.M.C. 20-276.

9. **Status of Operator.** Operator is an independent contractor. Neither Operator nor any of its employees or agents are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

10. **Agreement Creates No Payment Obligation.** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under this Agreement will not exceed zero dollars (\$0.00) (the "**Maximum Contract Amount**"). The City is not obligated to execute an agreement or any amendments to this Agreement for any services not specified herein. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves or payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

11. **No Discrimination in Employment.** In connection with the performance of work under the Agreement, Operator may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Operator shall insert the foregoing provision in all subcontracts.

12. **Intentionally Omitted.**

13. **Operator's Insurance.**

13.1 **General Conditions:** Operator agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Operator shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Operator shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Operator shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Operator. The Operator shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

13.2 **Proof of Insurance:** Operator may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Operator certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD form,

complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Operator's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

13.3 **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Operator and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

13.4 **Waiver of Subrogation:** For all coverages required under this Agreement, Operator's insurer shall waive subrogation rights against the City.

13.5 **Subcontractors and Subconsultants:** Operator shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Operator and appropriate to their respective primary business risks considering the nature and scope of services provided.

13.6 **Workers' Compensation and Employer's Liability Insurance:** Operator shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

13.7 **Commercial General Liability:** Operator shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation or misconduct.

13.8 **Automobile Liability:** Operator shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

13.9 **Cyber Liability:** Operator shall maintain Cyber Liability coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

13.10 **Commercial Crime:** Operator shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by Operator's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

14. **Indemnification.**

14.1 Operator agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Operator or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

14.2 Operator’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Operator’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

14.3 Operator shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City’s exclusive remedy.

14.4 Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of Operator under the terms of this indemnification obligation. Operator is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

14.5 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

15. **Termination; Remedies.**

15.1 If Operator is in breach or default of one more material terms or conditions of this Agreement (“**Operator Default**”), the City will give written notice of the Operator Default to Operator. After Operator’s receipt of the written notice, Operator will have sixty (60) calendar days to cure the Operator Default (the “**Cure Period**”). The Cure Period may be extended at the reasonable discretion of the Executive Director of HOST. If the Operator Default is not cured within the Cure Period, the Agreement may be terminated at the sole discretion of the Executive Director of HOST. If the Agreement is terminated pursuant to this subsection, the City shall be entitled to recoup all of the Proceeds that the City provided to Operator under the FAA from

Operator upon written demand. To the extent that any portion of the Proceeds are not otherwise voluntarily returned by Operator, the City may collect any amount due and owing to the City in accordance with any remedy available in either law or equity. The City may also exercise any remedies available to it pursuant to the Covenant in the event of an uncured Operator Default.

15.2 Operator may not terminate this Agreement while the Bonds are outstanding.

15.3 The Parties may mutually agree in writing to terminate this Agreement.

16. **Notices.** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, if to Operator at the address aforementioned and to the City at the addresses below:

Executive Director, Department of Housing Stability
201 W. Colfax Ave., Dept. 615
Denver, CO 80202

With a copy to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

17. **Compliance with all Laws.** Operator shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

18. **Severability.** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

19. **Governing Law; Venue.** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to

the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

20. **Legal Authority.** Operator represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Operator represents and warrants that he or she has been fully authorized by Operator to execute the Agreement on behalf of Operator and to validly and legally bind Operator to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Operator or the person signing the Agreement to enter into the Agreement.

21. **Use, Possession, or Sale of Alcohol or Drugs.** Operator shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs at the Property and the Shelter Facility. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

22. **Agreement as Complete Integration; Amendments.** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City. This Agreement may be amended without requiring an amendment to the FAA or the Covenant.

23. **City Execution of Agreement.** This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

24. **Funding and Assignment Agreement and Covenant.**

24.1 The Parties agree and acknowledge that this Agreement, along with the Covenant, are intended to control the ongoing operation, maintenance and administration of the Shelter Facility after construction is completed, and the FAA is intended to control the design and construction of the Shelter Facility. To the greatest extent possible, this Agreement, the Covenant and the FAA are intended to be interpreted as complementary to one another. Nothing contained herein shall be construed as limiting or waiving any rights or obligations described in the FAA or the Covenant.

24.2 The concurrent approval and mutual execution of the FAA to this Agreement shall be a material consideration for the Parties to enter into this Agreement, and the failure or refusal of the Parties to mutually execute the FAA shall be grounds for terminating this Agreement, in accordance with Section 15, above.

24.3 Operator's approval, execution and recordation of the Covenant in the real property records shall be a material consideration for the Parties to enter into this Agreement, and the failure or refusal of Operator to lawfully approve, execute and record the Covenant shall be grounds for terminating this Agreement, in accordance with Section 15, above.

25. **Operating Reserve.** Operator agrees that it shall be a condition precedent to the City providing any Proceeds to Operator that Operator provide evidence satisfactory to the City that it has funded an operating reserve in the amount of Five Million Dollars and No Cents (\$5,000,000.00) in a Federal Deposit Insurance Corporation-insured bank account for the purpose of funding shelter operations and minimizing funding gaps during the operation of the Shelter Facility (the "**Operating Reserve**"). The City shall not have approval rights for disbursements from the Operating Reserve. Operator shall provide an annual report to the City by January 31 of each year that this Agreement remains in effect, in a form approved by the City detailing on both a cumulative and a prior-fiscal year basis (i) disbursements from the Operating Reserve; (ii) use of funds; and (iii) the remaining Operating Reserve balance at the end of such reporting period.

26. **Future Operation Funding.** It is anticipated that Operator may apply to a future notice of funding availability issued by HOST for the provision of funds to support shelter operations for the Shelter Facility at a future date. Operator acknowledges and agrees that any City funding for an operating gap is not currently budgeted by the City, will not be provided out of any Proceeds, and a future award, if any, will be contingent on Operator's successful competitive bid and the availability of funds. To the extent not provided by the City, any funding needed by Operator for the operating gap shall be the sole responsibility of Operator.

27. **Electronic Signatures and Electronic Documents.** The Operator consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the 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 the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

28. **Third Parties' Right to Cure; Acceptance by City.** Except as otherwise approved by the City, any mortgages or similar instruments recorded on the Property shall be expressly subject to the terms, covenants, and conditions of this Agreement. Should Operator be in default in respect of any of the provisions of this Agreement, a lender or an owner of the Property shall have the right, but not the obligation, to cure such default, and City shall accept performance by or on behalf of the lender or owner of the Property as though, and with the same effect as if, it had been done or performed by Operator. Upon compliance with the foregoing, any notice of City advising of any such default shall be deemed rescinded and this Agreement shall continue in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY

CITY AND COUNTY OF DENVER, a Colorado municipal corporation

By: _____

Title: _____, Department of Housing Stability

OPERATOR

Urban Peak Denver, a Colorado non-profit corporation

By: _____

Title: _____