

AFTER RECORDING, PLEASE RETURN TO:

Sherman & Howard, LLC  
675 Fifteenth Street, Suite 2300  
Denver, Colorado 80202  
Attention: Matt Hogan, Esq.

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**FOURTH AMENDED AND RESTATED BUILD TO SUIT  
LEASE PURCHASE AGREEMENT NO. 2023**

**DATED \_\_\_\_\_, 2023**

**BETWEEN**

**CIVIC CENTER OFFICE BUILDING INC.,  
AS LANDLORD OR LESSOR**

**AND**

**CITY AND COUNTY OF DENVER, COLORADO,  
AS TENANT OR LESSEE**

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All right, title and interest of Civic Center Office Building Inc. in (i) this 2023 Lease, (ii) the Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under this 2023 Lease, and (iii) the Leased Property and reversions, if any, therein, except for Reserved Rights, have been absolutely assigned in trust to Zions Bancorporation, National Association, as assignee under the 2023 Assignment and the 2023 Assumption Agreement attached hereto and this 2023 Lease and the Leased Property leased hereunder are also subject to the mortgage lien and security interest of Zions Bancorporation, National Association, as Trustee under the Third Amended and Restated Mortgage and Indenture of Trust dated \_\_\_\_\_, 2023, between the Corporation and the Trustee.

**This Table of Contents is not a part of this 2023 Lease and is only for convenience of reference.**

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## **Fourth Amended and Restated Build to Suit Lease Purchase Agreement**

**This Fourth Amended and Restated Build To Suit Lease Purchase Agreement** dated \_\_\_\_\_, 2023 (the Initial Lease was amended and restated by the 2000B Lease, which, in turn, was amended and restated by the 2003C Lease, which, in turn, was amended and restated by the 2008A Lease and is now amended and restated by this 2023 Lease), between **Civic Center Office Building Inc.**, a Colorado nonprofit corporation, as landlord or lessor (the “Corporation”) by **Denver Public Facilities Trust 2023** by Trustee, **Zions First National Bank** as manager for the Corporation, and the **City and County of Denver, Colorado**, a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and the laws of the State of Colorado and the home rule Charter of the City, as tenant or lessee (the “City”).

### **PREFACE**

All capitalized terms used herein will have the meanings ascribed to them in Article 1 of this 2023 Lease.

### **RECITALS**

1. Pursuant to the City’s Charter and home rule powers, the City is authorized to enter into leasehold agreements, subject to annual appropriations, in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes which agreements may include an option to purchase and acquire title to such leased or rented property.

2. Pursuant to the Charter, the City Council may authorize the transfer of fee ownership in real property owned by the City.

3. The City Council previously determined that it was necessary, convenient and in furtherance of the governmental purposes of the City and in the best interests of the City and its inhabitants that the City (a) convey the Site and Annex I to the Corporation, (b) cause the Corporation to design, construct and equip the Original Project, which Original Project constitutes land, buildings, equipment and other property and (c) lease the Original Project from the Corporation pursuant to the 2000B Lease, for use by the City for its governmental purposes.

4. The Site and Annex I were conveyed to the Corporation contemporaneously with the execution and delivery of the 2000B Lease and pursuant to the 2000B Lease, including Article 7 (Acquisition, Rehabilitation, Construction, Installation of the Project; Occupancy and Maintenance of the Leased Property) and Exhibit F (Build to Suit Provisions) thereof, the Original Project described in the 2000B Lease was sufficiently acquired, rehabilitated, constructed and equipped such that (a) the Original Project received a temporary certificate of occupancy on July 19, 2002, and a certificate of occupancy on January 31, 2003, (b) the office building and improvements constituting the Original Project have been occupied by the City since November 25, 2002, and (c) pursuant to Section 7.3 of the 2000B Lease, the Certificate of Final Completion was delivered to the 2000B Trustee on June 20, 2003.

5. In 2003 the Corporation determined that it was economically advantageous at that time to effect a certain refunding transaction under which the Corporation passed the net savings generated by such refunding transaction to the City through reduced and restructured Base Rentals under the 2003C Lease and the Corporation and the City, in order to effect such refunding transaction entered into the 2003C Lease which amended, restated, replaced and superseded in its entirety the 2000B Lease. In addition, after the Corporation entered into the 2003C Lease, the Corporation completed the work constituting Costs of the Project with respect to the Original Project set aside under the Certificate of Final Completion and the City delivered to the 2003C Trustee the Certificate of Final Transfer with respect to the Original Project pursuant to the 2003C Lease.

6. In 2008 the Corporation determined that it was economically advantageous at that time to effect a certain refunding transaction under which the Corporation passed the net savings generated by such refunding transaction to the City through reduced and restructured Base Rentals under the 2008A Lease and the Corporation and the City, in order to effect such refunding transaction, entered into the 2008A Lease which amended, restated, replaced and superseded in its entirety the 2003C Lease.

7. The Corporation and the City have determined that it is convenient and in furtherance of the governmental and proprietary purpose of the City and in the best interests of the City and its inhabitants to design, acquire, construct and equip improvements to the Original Project (the "Improvements Project").

8. The Corporation has determined that it is economically advantageous at this time for funding of the Improvements Project and to effect the Refunding Transaction and the Corporation intends to enter into the Refunding Transaction and provide the economic advantages of the Refunding Transaction to the City through restructured Base Rentals under this 2023 Lease.

9. The City recognizes the economic benefits of the Refunding Transaction entered into by the Corporation and assigned to the Trustee, and, subject to the City's right to terminate this 2023 Lease as set forth in Article 6 hereof, intends to participate to the extent necessary by assisting the Corporation in fully effecting the Refunding Transaction and the funding of the Improvements Project so that the City and its citizens may enjoy the benefits of the restructured Base Rentals that will be integral to the Refunding Transaction and the funding of the Improvements Project.

10. The City Council has determined that it is necessary, convenient and in furtherance of the governmental purposes of the City and in the best interests of the City and its inhabitants that the City enter into this 2023 Lease in order to provide for the restructuring of the Base Rentals due under the 2008A Lease and make amendments to the 2008A Lease that are required to accomplish the Refunding Transaction and the funding of the Improvements Project.

11. This Fourth Amended and Restated Build to Suit Lease Purchase Agreement No. 2023 amends, restates, replaces and supersedes in its entirety the 2008A Lease.

12. The Corporation has determined to: (a) lease the Original Project and the Improvements Project (also described herein as the Leased Property) to the City pursuant to this

2023 Lease; and (b) (except for the Reserved Rights) absolutely assign in trust to the 2023 Trustee and pledge, mortgage and grant a lien on and a security interest in all of the Corporation's right, title and interest in and to (i) this 2023 Lease, (ii) all Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under this 2023 Lease and (iii) the Leased Property and reversions, if any, therein, all pursuant to the 2023 Indenture, the 2023 Assignment and the 2023 Assumption Agreement (the 2023 Indenture, the 2023 Assignment and the 2023 Assumption Agreement constitute amendments and restatements and are not new agreements of assignment, pledge, mortgage, grant and assumption).

13. The 2023 Assignment and the 2023 Assumption Agreement are attached hereto as Exhibit H.

14. The payment by the City of Base Rentals and Additional Rentals hereunder in any future Fiscal Year is subject to the renewal of this 2023 Lease for such future Fiscal Year.

15. The Base Rentals and Additional Rentals payable by the City under this 2023 Lease, for which specific Appropriations and Supplemental Appropriations by the City may be effected, shall constitute current expenditures of the City.

16. Neither the 2023 Lease nor the payment by the City of Base Rentals or Additional Rentals hereunder shall constitute or give rise to a general obligation or other indebtedness of the City or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City, within the meaning of any constitutional, Charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond the then current Fiscal Year.

17. The Corporation and the City intend that this 2023 Lease set forth their entire understanding and agreement regarding the terms and conditions upon which the Corporation is leasing the Leased Property to the City and upon which the City is leasing the Leased Property from the Corporation. It is the intention of the Corporation and the City that all prior negotiations, discussions, offers and agreements between them regarding the original conveyance of the Site and Annex I, the design, construction and equipping of the Original Project and Improvements Project and the leasing of the Leased Property be merged and incorporated in this 2023 Lease.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the Corporation and the City agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1 Certain Funds and Accounts.** All references herein to any funds and accounts shall mean the funds and accounts so designated which are established under the 2023 Indenture.

**Section 1.2 Definitions.** All capitalized terms defined in Article 1 of the 2023 Indenture shall have the same meaning in this 2023 Lease. All capitalized terms used herein shall have the following meanings under this 2023 Lease:



“2000B Certificates” means the Certificates of Participation, heretofore executed and delivered by the 2000B Trustee, as the Corporation’s assignee, pursuant to the terms of the 2000B Indenture.

“2000B Indenture” means the Mortgage and Indenture of Trust dated as of July 15, 2000, by and between the Corporation and the 2000B Trustee.

“2000B Lease” means the Amended and Restated Build to Suit Lease Purchase Agreement dated as of July 15, 2000, between the Corporation, as landlord or lessor, and the City, as tenant or lessee.

“2000B Trustee” means Zions Bancorporation, National Association, as the successor trustee under the 2000B Indenture to Vectra Bank Colorado, N.A., the initial trustee thereunder.

“2003C Certificates” means the Refunding Certificates of Participation, Series 2003C heretofore executed and delivered by the 2003C Trustee, as the Corporation’s assignee, pursuant to the terms of the 2003C Indenture.

“2003C Indenture” means the Amended and Restated Mortgage and Indenture of Trust dated as of July 15, 2003, by and between the Corporation and the 2003C Trustee.

“2003C Lease” means the Second Amended and Restated Build to Suit Lease Purchase Agreement dated as of July 15, 2003, between the Corporation, as landlord or lessor, and the City, as tenant or lessee.

“2003C Trustee” means Zions Bancorporation, National Association and its successors and assigns.

“2008A Certificates” means the Refunding Certificates of Participation, Series 2008A heretofore executed and delivered by the 2008A Trustee, as the Corporation’s assignee, pursuant to the terms of the 2008A Indenture.

“2008A Indenture” means the Second Amended and Restated Mortgage and Indenture of Trust dated as of October 1, 2008, by and between the Corporation and the 2008A Trustee.

“2008A Lease” means the Third Amended and Restated Build to Suit Lease Purchase Agreement dated as of October 1, 2008, between the Corporation, as landlord or lessor, and the City, as tenant or lessee.

“2008A Trustee” means Zions Bancorporation, National Association and its successors and assigns.

“2023 Assignment” means the Amended and Restated Assignment dated \_\_\_\_\_, 2023, attached to this 2023 Lease as Exhibit H, from the Corporation to the 2023 Trustee of (a) this 2023 Lease, (b) all Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under this 2023 Lease (except the Reserved Rights) and (c) the Leased Property and reversions, if any, therein.

“2023 Assumption Agreement” means the Amended and Restated Assumption Agreement dated \_\_\_\_\_, 2023, attached to this 2023 Lease as Exhibit H, executed by the 2023 Trustee and under which the 2023 Trustee accepts all of the Corporation’s right, title and interest and assumes the Corporation’s obligations (except the Reserved Rights) in, to and under (a) this 2023 Lease, (b) all Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under this 2023 Lease and (c) the Leased Property and reversions, if any, therein and assumes the obligation to perform and satisfy all the terms, covenants and conditions of this 2023 Lease on the part of the Corporation to be performed.

“2023 Certificates” means the Certificates of Participation, Series 2023 executed and delivered by the 2023 Trustee, as the Corporation’s assignee, pursuant to the terms of the 2023 Indenture.

“2023 Indenture” means the Third Amended and Restated Mortgage and Indenture of Trust dated \_\_\_\_\_, 2023, by and between the Corporation and the 2023 Trustee.

“2023 Lease” or “Lease” mean, collectively, the Initial Lease, as amended and restated by the 2000B Lease, the 2003C Lease, the 2008A Lease and as further amended and restated by this Fourth Amended and Restated Lease Purchase Agreement No. 2023 dated \_\_\_\_\_, 2023, between the City, as tenant or lessee, and the Corporation, as landlord or lessor, as the same may hereafter be amended and/or restated.

“2023 Trustee” or “Trustee” mean Zions Bancorporation, National Association, as the Corporation’s assignee under the 2023 Assignment and as the Trustee, assignee and mortgagee under the 2023 Indenture, and its successors and assigns.

“Additional Rentals” means, subject to Appropriation and with the prior written approval of the Manager of Finance of the City, the payment or cost of all:

(a) (i) reasonable expenses and fees of the Corporation, as provided by the Corporation to the Manager of Finance, related to the preparation of financial records and tax returns of the Corporation and maintenance of the corporate status of the Corporation or other informational filings with the Internal Revenue Service, (ii) reasonable expenses and fees, other than attorneys’ fees, of the Corporation and the 2023 Trustee, as the Corporation’s assignee, related to the performance or discharge of their respective responsibilities under the provisions of this 2023 Lease or the 2023 Indenture, including the reasonable fees and expenses of any person or firm selected to make rebate calculations under the provisions of the 2023 Indenture and dissemination duties, if any, and the expenses of the Corporation and the 2023 Trustee in respect of any policy of insurance, surety bond or other credit instrument, including liquidity facilities, any investment agreements, any remarketing or similar agreements, including agreements relating to interest rate mode conversions, obtained or entered into by either the Corporation or the Trustee in respect of any Certificates of Participation, (iii) insurance deductible amounts in respect of insurance required to be maintained under this 2023 Lease if such amounts are paid by the Corporation, and (iv) expenses and fees of the Corporation or the 2023 Trustee incurred at the request of the City;

(b) taxes, assessments, insurance premiums, utility charges, maintenance, upkeep, repair and replacement with respect to the Leased Property or as otherwise required under this 2023 Lease; and

(c) all other charges and costs (together with all interest and charges that may accrue thereon in the event that the City shall fail to pay the same, as specifically set forth in this 2023 Lease) which the City agrees to assume or pay as Additional Rentals under this 2023 Lease.

Payment by the City of any Additional Rentals requires the prior written approval of the Manager of Finance. Additional Rentals shall not include Base Rentals.

“Annex I” means the building located on the Site on the date of the initial execution and delivery of the 2003C Lease, which building, as a result of the acquisition, rehabilitation, construction and equipping of the Original Project, has been physically incorporated into the Original Project.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the City from time-to-time concerning or relating to bribery or corruption.

“Appropriation” means the collective procedure by which the City Council specifically appropriates funds for a purpose and the City effects an Encumbrance for such purpose. The term “Appropriation” includes an initial Appropriation and any Supplemental Appropriation.

“Approval of Special Counsel” means an opinion of Special Counsel to the effect that the matter proposed will not adversely affect the excludability from gross income for federal income tax purposes of the designated interest portion of the Base Rentals paid by the City under this 2023 Lease and received by the Owners of the 2023 Certificates.

“Authorized Representative” means:

(a) in the case of the Corporation, the Trust, as the manager of the Corporation, and when used with reference to any act or document also means any other person authorized by a certificate of the Corporation to perform such act or execute such documents;

(b) in the case of the City, means the Manager of Finance or the person or persons authorized by ordinance of the City to perform any act or execute any documents; and

(c) in the case of the 2023 Trustee, as Trustee and the Corporation’s assignee, any person authorized to perform any act or sign any document by or pursuant to the bylaws or any resolution of the governing body of the 2023 Trustee.

“Base Rentals” means the rental payments payable during the Lease Term by the City to the Trustee, as assignee of the Corporation with respect to this 2023 Lease constituting payments payable by the City for and in consideration of the right to possess and use the Leased Property. Base Rentals consist of two (2) components, Principal Portions and Interest Portions. The Principal Portions of the Base Rentals are equal to the principal portions payable by the Trustee, as the assignee of the Corporation, of the 2023 Lease in respect of the 2023 Certificates executed and delivered by the Trustee under the 2023 Indenture. The Interest Portions of the Base Rentals

are equal to the interest portions payable to the Owners of the 2023 Certificates by the Trustee, as the assignee of the Corporation, of the 2023 Lease in respect of the 2023 Certificates executed and delivered by the Trustee under the 2023 Indenture. The term “Base Rentals” does not include Additional Rentals. The Base Rentals payable during the Lease Term are set forth in Exhibit E (Base Rentals Schedule) attached hereto.

“Base Rentals Payment Dates” means Base Rentals Payment Dates as may be set forth on any Exhibit E that has been revised pursuant to Section 6.2(d) hereof.

“Build To Suit Provisions” means (a) with respect to the Original Project, the Build to Suit Provisions set forth in Exhibit F attached hereto and (b) with respect to the Improvements Project, the provisions set forth in Exhibit I attached hereto.

“Building” means the building located on the Site as described in Exhibit A of this 2023 Lease at any time and from time-to-time.

“Business Day” means any day, other than a Saturday or a Sunday or a day (a) on which banks located in Denver, Colorado, Salt Lake City, Utah or New York, New York are required or authorized by law or executive order to close or (b) on which the Federal Reserve is closed.

“Certificate of Final Completion” means (a) with respect to the Original Project, the Certificate of Final Completion delivered to the 2000B Trustee pursuant to the 2000B Lease and (b) with respect to the Improvements Project, the Certificate of Substantial Completion to be delivered to the 2023 Trustee pursuant to this 2023 Lease.

“Certificate of Final Transfer” means, with respect to the Original Project, the Certificate of Final Transfer delivered to the 2003C Trustee pursuant to the 2003C Lease (in substantially the form attached as Exhibit D to the 2003C Lease).

“Certificates of Participation” means the Certificates of Participation executed and delivered by the 2023 Trustee pursuant to the terms of the 2023 Indenture, including the 2023 Certificates.

“Charter” means the home rule charter of the City.

“City” means the City and County of Denver, Colorado, only in its capacity as tenant or lessee under this 2023 Lease and not in respect of its police powers or any other capacity, power or function of the City.

“City Council” means the City Council of the City.

“Closing” means \_\_\_\_\_, 2023, the date on which this 2023 Lease is executed and delivered by the City.

“Code” means the Internal Revenue Code of 1986, as amended and rulings and regulations promulgated thereunder.

“Corporation” means Civic Center Office Building Inc., a Colorado nonprofit corporation.

“Costs of the Project” or “Project Costs” mean all costs and expenses incurred by the Corporation in connection with the Original Project and Improvements Project, including without limitation:

(a) obligations incurred or assumed for labor, materials and equipment, including the Equipment;

(b) the cost of performance and payment bonds and of insurance of all kinds (including, without limitation, title insurance) that may be necessary or appropriate;

(c) the costs of engineering, architectural and other professional and technical services, including obligations incurred or assumed for preliminary design and development work, test borings, surveys, estimates and plans and specifications;

(d) administrative costs incurred in connection with the acquisition, construction and equipping of the Original Project and Improvements Project, including supervision of construction and installation as well as the performance of all of the other duties required by or as a consequence of the Original Project and Improvements Project; including, without limitation, costs of preparing and securing all Project Documents, architectural, engineering and other professional and technical fees, legal fees and expenses, appraisal fees, independent inspection fees, auditing fees, and advertising expenses;

(e) costs of execution and delivery of Certificates of Participation;

(f) all costs which are required to be paid under the terms of any Project Contract, including the Improvements Project Design Build Contract and the Improvements Project Development Services Agreement as defined in Exhibit J (Improvements Project Build To Suit Provisions) hereto;

(g) the costs of acquiring the Site and Annex I and all other costs which are considered to be a part of the costs of the Original Project and Improvements Project in accordance with generally accepted accounting principles;

(h) payments to a reserve fund to the extent necessary to establish or maintain the reserve requirement, if any; and

(i) any and all other costs necessary to effect the Corporation’s acquisition, construction, improvement, installation, financing and initial operations of the Original Project and Improvements Project to the extent the same are permitted by the laws of the State and will not adversely affect the excludability from gross income for federal income tax purposes of the interest portion of Base Rentals.

“Counsel” means an attorney at law or law firm (who may be counsel for the Corporation) who is not unsatisfactory to the 2023 Trustee, as the Corporation’s assignee.

“CRS” means Colorado Revised Statutes.

“DRMC” means Denver Revised Municipal Code, as the same is amended or recodified from time-to-time.

“Encumbrance” means (a) the act of submitting a written request of the City to the Purchasing Director of the City and (b) the certification in writing by the Controller of the City for the applicable Fiscal Year that (i) there is an unencumbered balance in the appropriation and the appropriate fund chargeable therefor sufficient to provide for the Base Rentals and the Additional Rentals, as the case may be, for the period specified in this 2023 Lease and (ii) such amounts have been set aside for such purposes.

“Equipment” means (a) those items of equipment, machinery and related property included in the Leased Property as described in Exhibit A hereto and (b) any items of equipment, machinery and related property acquired in replacement or substitution for the Equipment originally included in the Leased Property, less equipment, machinery and related property released from this 2023 Lease or damaged, destroyed or condemned, all pursuant to the provisions of this 2023 Lease.

“Event(s) of Lease Default” means any event as defined in Section 14.1 of this 2023 Lease.

“Event of Nonappropriation” means the termination and non-renewal of this 2023 Lease by the City, determined by the City’s exercise of its right, for any reason, to not enact by the last day of each Fiscal Year an appropriation ordinance for the ensuing Fiscal Year which includes (a) amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due. The term also means a notice under this 2023 Lease of the City’s intention to not renew and therefore terminate this 2023 Lease or an event described in this 2023 Lease relating to the exercise by the City of its right to not appropriate amounts due as Base Rentals and Additional Rentals in excess of the amounts for which an Appropriation or a Supplemental Appropriation has been previously effected.

“Finally Complete” or “Final Completion” mean and shall be deemed to have occurred (a) with respect to the Original Project, when Design Build Substantial Completion (as defined in Exhibit F (Build to Suit Provisions) to the 2003C Lease and Exhibit F hereto) occurred and the Corporation delivered to the 2003C Trustee the Certificate of Final Completion, with written acknowledgment by the Manager of Public Works; and (b) with respect to the Improvements Project, when Improvements Project Design Build Substantial Completion (as defined in Section 7 herein, occurs and the Corporation has delivered to the 2023 Trustee the Certificate of Final Completion, with written acknowledgment by the Manager of the Department of Transportation and Infrastructure; provided such date shall occur not later than three (3) years after \_\_\_\_\_, 2023. The Certificate of Final Completion with respect to the Original Project was delivered to the 2003C Trustee on June 20, 2003. The Original Project is Finally Complete.

“Fiscal Year” means the City’s fiscal year, which begins on January 1 and ends December 31 of the same year.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires;

storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the Corporation or the City in its capacity as tenant/lessee hereunder.

“Hazardous Substance” means and includes: (a) the terms “hazardous substance,” “release and “removal” which, as used herein, shall have the same meaning and definition as set forth in paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. §9601 and in Colorado law, provided, however, that the term “hazardous substance” as used herein shall also include “hazardous waste” as defined in paragraph (5) of 42 U.S.C. §6903 and “petroleum” as defined in paragraph (8) of 42 U.S.C. §6991; (b) the term “superfund” as used herein means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, being Title 42 U.S.C. §9601 et seq., as amended, and any similar State statute or local ordinance applicable to the Leased Property, including, without limitation, Colorado rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto; and (c) the term “underground storage tank” as used herein shall have the same meaning and definition as set forth in paragraph (1) of 42 U.S.C. §6991.

“Improvements Project” means the Improvements Project described in Exhibit I hereto.

“Improvements Project Construction Phase” means the period of time that began on the date the Corporation delivered access to the Site and Original Project to the Improvements Project Design Builder to begin the performance of its work under the Improvements Project Design Build Contract.

“Improvements Project Design Build Contract” means the Design Build Guaranteed Maximum Price Contract by and between the Corporation and the Improvements Project Design Builder. This term pertains to the work described on Exhibit I hereof.

“Improvements Project Design Builder” means GH Phipps Construction Companies.

“Initial Lease” means the Build to Suit Lease Purchase Agreement dated as of March 14, 2000, between the Corporation, as landlord or lessor, and the City, as tenant or lessee.

“Initial Term,” in respect of this 2023 Lease, means the period that commences on the date of delivery of this 2023 Lease and terminates on December 31 of the same Fiscal Year.

“Interest Payment Date” means each \_\_\_\_ 1 and \_\_\_\_ 1, commencing \_\_\_\_ 1, 202\_\_.

“Lease” means this 2023 Lease.

“Lease Balance” means the Total Aggregate Principal Portion of the Base Rentals under this 2023 Lease set forth in Exhibit E (Base Rentals Schedule) hereto, less the aggregate amount of Principal Portions of Base Rentals paid or prepaid by the City pursuant to this 2023 Lease.

“Lease Remedy” or “Lease Remedies” means any or all remedial steps provided in this 2023 Lease whenever an Event of Lease Default or an Event of Nonappropriation has happened and is continuing, which may be exercised by the 2023 Trustee, as the Corporation’s assignee, as provided in the 2023 Indenture.

“Lease Term” means the Initial Term and any Renewal Terms as to which the City may exercise its option to renew this 2023 Lease by effecting Appropriations of funds for the payment of Base Rentals and Additional Rentals hereunder, as provided in and subject to the provisions of this 2023 Lease. “Lease Term” refers to the time during which the City is the tenant or lessee of the Leased Property under this 2023 Lease.

“Leased Property” means the Site, the Building, the Equipment comprising the Original Project and the Improvements Project, as described in Exhibit A and Exhibit I hereto.

“Manager of Finance” means the City’s Manager of Finance, *ex officio* Treasurer, and Chief Financial Officer, or his or her designee, and his or her successor in functions, if any.

“Manager of the Department of Transportation and Infrastructure” means the City’s Manager of the Department of Transportation and Infrastructure, or his or her designee, and his or her successor in functions, if any.

“Manager of General Services” means the City’s Manager of General Services, or his or her designee, and his or her successor in functions, if any.

“Net Proceeds” means the proceeds of any performance or payment bond, or proceeds of insurance, including self-insurance, required by this 2023 Lease or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any Project Contract, or proceeds derived from the exercise of any Lease Remedy or otherwise following termination of this 2023 Lease by reason of an Event of Nonappropriation or an Event of Lease Default, less (a) all expenses (including, without limitation, attorney’s fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the City, the Corporation or the 2023 Trustee, as the Corporation’s assignee.

“Original Project” means the Site, the Building and the Equipment described in Exhibit A hereto.

“Original Project Construction Phase” means the period of time that began on the date the Corporation delivered access to the Site and Annex I to the Original Project Design Builder to begin the performance of its work under the Original Project Design Build Contract. The Original Project Construction Phase has been completed.

“Original Project Design Build Contract” means the Design Build Guaranteed Maximum Price Contract by and between the Corporation and the Design Builder. This term pertains to Exhibit F hereof.

“Original Project Design Builder” means Hensel Phelps Construction Co. This term pertains to Exhibit F hereof.

“Original Project Developer” or “Developer” means Mile High Development, LLC, a Colorado limited liability company. This term pertains to Exhibit F hereof.

“Permitted Encumbrances,” with respect to the Leased Property, means, as of any particular time: (a) liens for taxes and assessments not then delinquent, or liens which may remain



unpaid pending contest pursuant to the provisions of this 2023 Lease; (b) this 2023 Lease, the 2023 Indenture and any related fixture filing or financing statement; (c) utility, access and other easements and rights of way, restrictions and exceptions which the Manager of the Department of Transportation and Infrastructure of the City certifies will not interfere with or impair the Leased Property, including rights or privileges in the nature of easements as provided in this 2023 Lease; and (d) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Site was subject when leased to the City, as shown in Exhibit B hereto and which do not interfere in any material way with the Leased Property.

“Prepayment” means any amount paid by the City, in excess of amounts due in the then current Renewal Term, pursuant to the provisions of this 2023 Lease as a prepayment of the Base Rentals due hereunder.

“Principal Portion” means the portion of each Base Rentals payment that represents the payment of principal set forth in Exhibit E (Base Rentals Schedule) hereto.

“Project Contract” means any contract entered into by the Corporation or the City, regarding the acquisition, construction, improvement or installation of any part of the Original Project and Improvements Project (including, without limitation, contracts with construction contractors, vendors, architects, engineers and other consultants).

“Project Documents” means the following: (a) plans, drawings and specifications for the Original Project and Improvements Project when and as they are approved by the Corporation, including change orders, if any, as provided in this 2023 Lease; (b) any necessary permits for the Original Project and Improvements Project, including any building permits; (c) the Project Contracts; (d) policies of title, public liability, property and worker’s compensation insurance, or certificates thereof, as required by this 2023 Lease; (e) performance and payment bonds with respect to the Original Project and Improvements Project; and (f) any and all other documents executed by or furnished to the Corporation or the City in connection with the Project.

“Project Work” with respect to the Original Project, means Project Work within the meaning of the Build To Suit Provisions included as Exhibit F (Build to Suit Provisions) to the 2003C Lease and Exhibit I hereto; and with respect to the Improvements Project, means Project Work within the meaning of Improvements Project Build to Suit Provisions included as Exhibit I (Improvements Project Build to Suit Provisions) attached hereto. The Project Work with respect to the Original Project has been completed.

“Purchase Option Price” means the amount payable on any date, at the option of the City, to prepay Base Rentals sufficient to defease all of the Outstanding 2023 Certificates, terminate the Lease Term and purchase the Leased Property, as provided herein..

“Refunding Transaction” means a transaction or series of transactions in which the Corporation will refund the 2008A Certificates with the proceeds of the sale of the 2023 Certificates.

“Renewal Term” means any portion of the Lease Term commencing on January 1 of any year and terminating on or before December 31 of the same year as provided in Article 4 of this 2023 Lease.

“Reserved Rights” means, collectively, any rights or obligations the Corporation may have (a) with respect to the representations and covenants of the City to the Corporation under Section 2.1 of this 2023 Lease, (b) its rights and obligations in respect of the acquisition, construction and installation of the Improvements Project under “Revenues” means (a) all amounts payable by or on behalf of the City or with respect to the Leased Property pursuant to this 2023 Lease including, but not limited to, all Base Rentals, Prepayments, Purchase Option Prices and Net Proceeds, but not including Additional Rentals; (b) any portion of the proceeds of the 2023 A Certificates deposited with the 2023 Trustee in the Base Rentals Fund and any moneys that may be derived from any letter of credit, policy of insurance, surety bond or other credit instrument in respect of the Certificates of Participation, and (c) any moneys and securities, including investment income, held by the 2023 Trustee in the Funds and Accounts established under the 2023 Indenture (except for moneys and securities held in the Rebate Fund and the Prepayments Subaccount within the 2008A Base Rentals Account of the Base Rentals Fund).

“Site” means the real estate legally described in Exhibit A of this 2023 Lease.

“Special Counsel” means any counsel experienced in matters of municipal law, satisfactory to the 2023 Trustee, and listed in the list of municipal bond attorneys, as published semiannually by *The Bond Buyer*, or any successor publication.

“State” means the State of Colorado.

“Supplemental Appropriation” means any Appropriation after an initial Appropriation in respect of Base Rentals or Additional Rentals due under this 2023 Lease.

“Tax Certificate” means the Tax Certificate dated the date of Closing executed and delivered by the Manager of Finance on behalf of the City with respect to this 2023 Lease.

## **ARTICLE 2**

### **REPRESENTATIONS AND COVENANTS; RELATIONSHIP OF CITY, CORPORATION AND 2023 TRUSTEE**

**Section 2.1 Representations and Covenants of the City.** The City represents and covenants to the Corporation and the 2023 Trustee, as the Corporation’s assignee, to the extent allowed by law and subject to renewal of this 2023 Lease and Appropriation as set forth in Article 6 hereof, as follows:

(a) The City is a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and laws of the State and the Charter. The City is authorized to enter into this 2023 Lease and to carry out its obligations under this 2023 Lease. The City has duly authorized and approved the execution and delivery of this 2023 Lease and all other documents related to the execution and delivery of this 2023 Lease.

(b) The acquisition of the Site and Annex I by the Corporation under the terms and conditions provided for in 2003C Lease, were necessary, convenient and in furtherance of providing the Original Project constituting a portion of the Leased Property hereunder for the City’s use in fulfilling its governmental purposes. The Leased Property has been and will continue

to be used at all times in connection with the City's governmental and proprietary purposes and functions (except (i) for subleases of the Leased Property by the City in existence on the date of Closing or (ii) to the extent that subleasing of the Leased Property by the City is permitted by Section 13.2 of this 2023 Lease) and is in the best interests of the citizens of the City and no portion of the Leased Property will be used directly or indirectly in any trade or business carried on by any person other than a governmental unit of the State (except as may be permitted pursuant to Section 13.2 of this 2023 Lease).

(c) To the best knowledge of the City, neither the execution and delivery of this 2023 Lease, nor the fulfillment of or compliance with the terms and conditions of this 2023 Lease, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City or its property is bound, or violates any Charter provision, statute, regulation, rule, order of any court having jurisdiction, judgment or administrative order applicable to the City, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien or encumbrance whatsoever upon any of the property or assets of the City, except for Permitted Encumbrances.

(d) The City agrees that, except for non-renewal and nonappropriation as set forth in Article 6 hereof, if the City fails to perform any act which the City is required to perform under this 2023 Lease, the Corporation or the 2023 Trustee may, but shall not be obligated to, perform or cause to be performed such act, and any reasonable expense incurred by the Corporation or the 2023 Trustee in connection therewith shall be an obligation owing by the City (from moneys for which an Appropriation has been effected) to the Corporation or the 2023 Trustee, as the case may be, and shall bear interest at an annual rate of 12% until paid and shall be a part of Additional Rentals, and the Corporation or the 2023 Trustee shall be subrogated to all of the rights of the party receiving such payment.

(e) There is no litigation or proceeding pending against the City affecting the right of the City to execute this 2023 Lease or the ability of the City to make the payments required hereunder or to otherwise comply with the obligations contained herein, except such litigation or proceeding as has been disclosed in writing to the Corporation or the 2023 Trustee on or prior to the date this 2023 Lease is executed and delivered.

(f) Except for customary materials necessary for cleaning and maintenance of the Leased Property, the City shall not cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Property without prior written notice to the 2023 Trustee, as the Corporation's assignee, and the Corporation and all Hazardous Substances, including, customary materials necessary for cleaning and maintenance of the Leased Property, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Leased Property. If the presence of Hazardous Substance on the Leased Property caused or permitted by the City results in contamination of the Leased Property, or if contamination of the Leased Property by Hazardous Substance otherwise occurs for which the City is legally liable for damage resulting therefrom, then the City shall defend (to the extent that an Appropriation for the necessary moneys has been effected by the City) the Corporation and the 2023 Trustee from claims for damages, penalties, fines, costs, liabilities or losses. This duty to defend is not an indemnification, it is expressly

understood that the City is not indemnifying the Corporation or the 2023 Trustee and expenses of such defense shall constitute Additional Rentals. Without limiting the foregoing, if the presence of any Hazardous Substance on the Leased Property caused or permitted by the City results in any contamination of the Leased Property, the City shall provide prior written notice to the 2023 Trustee and the Corporation and promptly take all actions at its sole expense (which expenses shall constitute Additional Rentals) as are necessary to effect remediation of the contamination in accordance with legal requirements.

(g) The City hereby agrees to defend (to the extent that an Appropriation for necessary moneys has been effected) the Corporation and the 2023 Trustee against any and all claims for losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against the Corporation or the 2023 Trustee for, with respect to or as a direct or indirect result of the failure of the Leased Property to comply with any changes, after the date of occupancy by the City, in applicable laws concerning access to or use of the Leased Property by handicapped or disabled persons, specifically including, but not by way of limitation, any failure to comply with the requirements of the Americans With Disabilities Act (P.L. 101-336) during the time the City occupies the Leased Property. This duty to defend is not an indemnification and it is expressly understood that the City is not indemnifying the Corporation or the 2023 Trustee.

(h) The City covenants and agrees to comply with any applicable covenants and requirements of the City set forth in the Tax Certificate.

(i) The City hereby makes the following covenants and representations in connection with the execution and delivery of this Lease.

(i) The City is not a Sanctioned Person. The City agrees to comply with all applicable Anti-Corruption Laws. To the best of the undersigned's knowledge but without conducting any investigation or research, (A) the City is in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects, and (B) the City is not knowingly engaged in any activity that would reasonably be expected to result in the City being designated as a Sanctioned Person. The use of proceeds of the 2023 Certificates of Participation will not violate Anti-Corruption Laws or applicable Sanctions.

(ii) The City agrees to provide the following items to the Trustee in an electronic format acceptable to the Trustee, if not publicly available: (A) audited financial statements within 270 days of the fiscal year end; and (B) additional information as reasonably requested by the Trustee.

(iii) The City agrees that it will not take any action or fail to take action that would result in the Trustee's default or violation of the provisions in the Indenture.

**Section 2.2 Representations and Covenants of the Corporation.** The Corporation represents and covenants as follows:

(a) The Corporation is a nonprofit corporation duly organized, existing and in good standing under the laws of the State, formed exclusively to acquire, develop, finance, construct, own, maintain and operate the Leased Property and for no other purpose, is duly qualified to do

business in the State, has all necessary power to enter into the transactions contemplated by this 2023 Lease and by the 2023 Indenture and to carry out and perform its obligations under this 2023 Lease, is possessed of full power to own, hold and lease real and personal property for such purpose and to lease the same as lessee or as lessor and has duly authorized the execution and delivery of this 2023 Lease, the 2023 Indenture and the 2023 Assignment.

(b) Except as specifically provided in this 2023 Lease, including the execution and delivery by the Corporation of the 2023 Indenture and the 2023 Assignment, the Corporation will not pledge or assign its right, title and interest in and to (i) this 2023 Lease, (ii) the Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations which may be derived under this 2023 Lease and (iii) the Leased Property and reversions, if any, therein or any of its other rights under this 2023 Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to and under this 2023 Lease or the Leased Property, except for Permitted Encumbrances.

(c) To the best knowledge of the Corporation, neither the execution and delivery of this 2023 Lease, the 2023 Assignment or the 2023 Indenture, nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby or thereby conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing.

(d) Except as specifically provided in this 2023 Lease or the 2023 Indenture, the Corporation will not assign its duties and obligations under this 2023 Lease to any other person, firm or corporation, so as to impair or violate the representations and covenants contained in this Section 2.2.

(e) There is no litigation or proceeding pending against the Corporation affecting the right of the Corporation to execute this 2023 Lease, the 2023 Indenture or the 2023 Assignment, and perform its obligations hereunder or thereunder, except such litigation or proceeding as has been disclosed in writing to the City on or prior to the date this 2023 Lease is executed and delivered.

(f) The Corporation covenants and agrees to comply with any applicable covenants and requirements of the Corporation set forth in the Tax Certificate.

**Section 2.3 Acknowledgment by the Corporation of Nature of Lease.** The Corporation acknowledges that the annually renewable obligations of the City under this 2023 Lease are payable solely from Base Rentals and Additional Rentals which may be derived under this 2023 Lease and other Revenues and shall not constitute or give rise to a general obligation or other indebtedness of the City or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City, within the meaning of any constitutional, Charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond the then current Fiscal Year. The Corporation further acknowledges that this 2023 Lease may not be renewed in the event that funds are not specifically budgeted and available from an Appropriation which has been effected by the City to continue paying all Base Rentals and Additional Rentals during the next occurring Fiscal Year, and that the act of effecting an

Appropriation budgeting funds is a governmental act and, as such, is solely within the discretion of the City.

**Section 2.4 City Acknowledgment of Certain Matters.** The City acknowledges (a) the 2023 Assignment of this 2023 Lease, (b) the 2023 Assumption Agreement with respect to the 2023 Assignment of this 2023 Lease, (c) the 2023 Indenture, and (d) the assignment of the Original Project Design Build Contract and Improvements Project Design Build Contract and agrees to the absolute assignment by the Corporation to the 2023 Trustee and the assumption by the 2023 Trustee of all rights, title, and interests of the Corporation, in, to and under this 2023 Lease (except the Reserved Rights) and the Leased Property and agrees to the delegation (except the Reserved Rights) by the Corporation to the 2023 Trustee, pursuant to the 2023 Indenture, the 2023 Assignment and the 2023 Assumption Agreement of all duties of the Corporation under this 2023 Lease. The City also acknowledges: (a) the sale by the Corporation and the execution and delivery by the 2023 Trustee of the 2023 Certificates; and (b) any provider of any liquidity facility, letter of credit, surety bond or other credit facility obtained in respect of 2023 Certificates.

**Section 2.5 Relationship of City, Corporation and 2023 Trustee.** The relationship of the City, the Corporation and the 2023 Trustee under this 2023 Lease is, and shall at all times remain, solely that of tenant or lessee, landlord or lessor and Corporation's assignee, respectively; and the City neither undertakes nor assumes any responsibility or duty to the Corporation or the 2023 Trustee or to any third party with respect to the Corporation's or the 2023 Trustee's obligations relating to the Leased Property; and neither the Corporation nor the 2023 Trustee undertakes or assumes any responsibility or duty to the City or to any third party with respect to the City's obligations relating to the Leased Property. Notwithstanding any other provisions of this 2023 Lease: (a) the City, the Corporation and the 2023 Trustee (in its capacity as the trustee for any Certificates of Participation) are not, and do not intend to be construed to be, partners, joint venturers, members of a joint enterprise, alter egos, managers, controlling persons or other business associates or participants of any kind of either of the other, and the City, the Corporation and the 2023 Trustee do not intend to ever assume such status; and (b) the City, the Corporation and the 2023 Trustee shall not be deemed responsible for, or a participant in, any acts, omissions or decisions of either of the other.

**ARTICLE 3**  
**LEASE OF THE LEASED PROPERTY**

The Corporation demises and leases the Leased Property to the City, and the City leases the Leased Property from the Corporation, in accordance with the provisions of this 2023 Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

**ARTICLE 4**  
**LEASE TERM; BUDGET AND APPROPRIATIONS PROCEDURES FOR PAYMENTS OF ESTIMATED BASE RENTALS AND ADDITIONAL RENTALS**

**Section 4.1 Duration of Lease Term.** The Lease Term for this 2023 Lease shall commence as of the date hereof. The Initial Term for this 2023 Lease shall terminate on December 31, 2023. This 2023 Lease may be renewed, solely at the option of the City, for the number of Renewal Terms represented in Exhibit E (Base Rentals Schedule) attached hereto. The maximum Lease Term hereunder does not exceed the remaining weighted average useful life of the Leased Property.

The City's Manager of Finance, the Manager's designee or other officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the annual budget proposals submitted to the City Council, in any year in which this 2023 Lease shall be in effect, items for all payments required for the ensuing Renewal Term under this 2023 Lease until such time, if any, as the City may determine to not renew and terminate this 2023 Lease. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the City that any decision to effect an Appropriation or Supplemental Appropriation for the Base Rentals and Additional Rentals shall be made solely by the City and the actions of the officials of the City as further provided in the following paragraph.

Not later than December 15 of the current Initial Term or any Renewal Term the Manager of Finance of the City shall give written notice (in substantially the form set forth in Exhibit G attached hereto) to the Corporation and the 2023 Trustee, as the Corporation's assignee, that either:

(a) the City has effected or intends to effect on a timely basis an Appropriation for the ensuing Fiscal Year which includes (1) sufficient amounts authorized and directed to be used to pay all of the Base Rentals as are estimated to become due and (2) sufficient amounts to pay such Additional Rentals as are estimated to become due, all as further provided in Sections 6.2, 6.3 and 6.4 of this 2023 Lease, whereupon, this 2023 Lease shall be renewed for the ensuing Fiscal Year; or

(b) the City has determined, for any reason, not to renew this 2023 Lease for the ensuing Fiscal Year.

Subject to the provisions of Section 6.4(a) hereof, the failure to give such notice shall not constitute an Event of Lease Default, nor prevent the City from electing to not renew this 2023 Lease, nor result in any liability on the part of the City. The City's option to renew or not to renew this 2023 Lease shall be conclusively determined by whether or not the applicable Appropriation has been made on or before December 31 of each Fiscal Year, all as further provided in Article 6 of this 2023 Lease.

The terms and conditions hereof during any Renewal Term shall be the same as the terms and conditions hereof during the Initial Term, except that the Purchase Option Price and the Base Rentals shall be as provided in the definitions of such terms, the provisions of Article 12 hereof in respect of the Purchase Option Price and Exhibit E (Base Rentals Schedule) hereof.

**Section 4.2 Termination of Lease Term.** The Lease Term shall terminate upon the earliest of any of the following events:

(a) the expiration of the Initial Term or any Renewal Term during which there occurs an Event of Nonappropriation pursuant to Section 4.1 and Article 6 of this 2023 Lease (provided that the Lease Term will not be deemed to have been terminated if the Event of Nonappropriation is cured as provided in Section 6.4 hereof);

(b) the conveyance of the Leased Property under this 2023 Lease to the City upon payment of the Purchase Option Price or all Base Rentals and Additional Rentals, for which an Appropriation or Supplemental Appropriation has been effected by the City for such purpose, as provided in Section 12.2(a) or (b) of this 2023 Lease; or

(c) an uncured Event of Lease Default and termination of this 2023 Lease under Article 14 of this 2023 Lease by the 2023 Trustee, as the Corporation's assignee.

Except for an event described in subparagraph (b) above, upon termination of this 2023 Lease, the City agrees to peaceful delivery of the Leased Property to the Corporation or the 2023 Trustee, as the Corporation's assignee.

Termination of the Lease Term shall terminate all unaccrued obligations of the City under this 2023 Lease and shall terminate the City's rights of possession under this 2023 Lease (except to the extent of the holdover provisions of Sections 6.5 and 14.2(d)(i) hereof, and except for any conveyance pursuant to Article 12 of this 2023 Lease). All obligations of the City accrued prior to such termination shall be continuing until the 2023 Trustee, as the Corporation's assignee, agrees that such accrued obligations have been satisfied as further provided in the 2023 Indenture.

Upon termination of the Lease Term, any moneys received by the 2023 Trustee in excess of the amounts necessary to terminate the 2023 Indenture, shall be paid to the City.

## **ARTICLE 5 ENJOYMENT OF THE LEASED PROPERTY**

**Section 5.1 Corporation's Covenant of Quiet Enjoyment.** The Corporation hereby covenants that the City shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Corporation, except as expressly required or permitted by this 2023 Lease including the provisions of Article 7 hereof and Exhibit F (Section 7.1 through 7.13 of 2023 Lease and Build to Suit Provisions) hereto and the Improvements Project provisions attached hereto as Exhibit I. The Corporation shall not interfere with the quiet use and enjoyment of the Leased Property by the City during the Lease Term so long as no Event of Lease Default shall have occurred. The Corporation shall, at the request of the City and at the cost of the City, join and cooperate fully in any legal action in which the City asserts against third parties its right to such possession and enjoyment, or which involves the imposition of any taxes



or other governmental charges on or in connection with the Leased Property. In addition, the City may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined in any action affecting its liabilities hereunder.

The provisions of this Article 5 shall be subject to the Corporation's and the 2023 Trustee's right to complete the construction and inspect the Leased Property and the City's books and records with respect thereto as provided in Section 11.6 hereof.

**Section 5.2 City's Need for the Leased Property.** The City has determined and hereby determines that it has a current need for the Leased Property. It is the present intention and expectation of the City that this 2023 Lease will be renewed annually until title to the Leased Property is acquired by the City pursuant to this 2023 Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

## **ARTICLE 6 PAYMENTS BY THE CITY**

**Section 6.1 Payments to Constitute Currently Budgeted Expenditures of the City.** The City and the Corporation acknowledge and agree that the Base Rentals, Additional Rentals and any other obligations hereunder shall constitute currently budgeted expenditures of the City, if an Appropriation or Supplemental Appropriation has been effected for such purpose. The City's obligations to pay Base Rentals, Additional Rentals and any other obligations under this 2023 Lease shall be from year to year only (as further provided in Article 4 and Sections 6.2 and 6.4 hereof), shall extend only to moneys for which an Appropriation or Supplemental Appropriation has been effected by the City, and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this 2023 Lease shall be construed or interpreted as a delegation of governmental powers or as creating a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City or a general obligation or other indebtedness of the City within the meaning of any constitutional, Charter or statutory debt limitation, including without limitation Article X, Section 20 or Article XI, Sections 1, 2 and 6 of the Constitution of the State. This 2023 Lease shall not directly or indirectly obligate the City to make any payments beyond those for which an Appropriation or Supplemental Appropriation has been effected by the City for the City's then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property. No provision of this 2023 Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this 2023 Lease restrict the future issuance of any City bonds or obligations payable from any class or source of City moneys.

### **Section 6.2 Base Rentals, Additional Rentals and Purchase Option Price.**

(a) The City shall pay Base Rentals for which an Appropriation or Supplemental Appropriation has been effected by the City, directly to the 2023 Trustee, as the Corporation's assignee, during the Initial Term and any Renewal Term, on the Base Rentals Payment Dates and in the total Base Rental amounts set forth in Exhibit E (Base Rentals Schedule) attached hereto and made a part hereof. For federal and state income tax purposes, a portion of each payment of Base Rentals will be designated and paid as interest. Exhibit E (Base Rentals Schedule) hereto sets forth the Interest Portion of each payment of Base Rentals. The City shall receive credit against

its obligation to pay Base Rentals to the extent moneys are held by the 2023 Trustee, as the Corporation's assignee, on deposit in the Base Rentals Fund created under the 2023 Indenture and are available to pay Base Rentals. The City acknowledges that upon receipt by the Trustee of each payment of Base Rentals, the Trustee pursuant to the terms of the 2023 Indenture, is to deposit the amount of such Base Rentals in the Base Rentals Fund.

(b) Notwithstanding anything in this Section 6.2 or any other provision of this 2023 Lease to the contrary: (a) the City, the Corporation and the 2023 Trustee, in its capacity as trustee for the Certificates of Participation, are not, and do not intend to be construed to be, partners, joint venturers, members of a joint enterprise, alter egos, managers, controlling persons or other business associates or participants of any kind of either of the other, and the City, the Corporation and the 2023 Trustee do not intend to ever assume such status; and (b) the City, the Corporation and the 2023 Trustee shall not be deemed responsible for, or a participant in, any acts, omissions or decisions of either of the other.

(c) The City may, on any date, pay the then applicable Purchase Option Price for the purpose of terminating this 2023 Lease in whole and purchasing the Leased Property as further provided in Article 12 of this 2023 Lease. Subject to the Approval of Special Counsel, the City may also, at any time during the Lease Term, prepay any portion of the Base Rentals due under this 2023 Lease. The City shall give the 2023 Trustee notice of its intention to exercise either of such options not less than 45 days in advance of the date of exercise and shall deposit with the 2023 Trustee by not later than the date of exercise of the related option an amount equal to the Purchase Option Price due on the selected date for payment of the Purchase Option Price or the applicable amount of Base Rentals to be prepaid on the selected Prepayment date.

(d) The Base Rentals set forth in Exhibit E (Base Rentals Schedule) shall be recalculated by the Trustee in the event of any partial Prepayment of Base Rentals, in a manner consistent with the related partial redemption of any Certificates of Participation executed and delivered by the Trustee with respect to this 2023 Lease and with the written agreement of the Manager of Finance. Neither such recalculation nor such change in Base Rental Payment Dates requires the amendment of Exhibit E (Base Rentals Schedule) to this 2023 Lease, provided that the maximum amounts payable within each Renewal Term do not exceed the maximum amounts set forth in Exhibit E.

(e) All Additional Rentals for which an Appropriation or Supplemental Appropriation has been effected shall be paid by the City on a timely basis directly to the person or entity to which such Additional Rentals are owed. If estimates of Additional Rentals for any Fiscal Year are not itemized in the budget required to be furnished to the 2023 Trustee under Section 4.1 of this 2023 Lease, an itemization of such estimated Additional Rentals shall be furnished by the City to the 2023 Trustee, as the Corporation's assignee, on or before the December 31 preceding such Fiscal Year. This 2023 Lease shall be deemed and construed to be an absolute net lease as further provided in Section 15.7 hereof.

**Section 6.3 Manner of Payment.** The Base Rentals for which an Appropriation or Supplemental Appropriation has been effected by the City, and, if paid, the Purchase Option Price, shall be paid or prepaid by the City by City warrant or by wire transfer of federal funds, certified

funds or other method of payment acceptable to the 2023 Trustee in lawful money of the United States of America to the 2023 Trustee at its corporate trust office.

The obligation of the City to pay the Base Rentals and Additional Rentals as required under this Article 6 and other sections hereof in any Fiscal Year for which an Appropriation or Supplemental Appropriation has been effected by the City for the payment thereof shall be absolute and unconditional, subject to the provisions hereof, and payment of the Base Rentals and Additional Rentals in such Fiscal Years shall not be abated through accident or unforeseen circumstances, or any default by the Corporation under this 2023 Lease, or under any other agreement between the City and the Corporation, or for any other reason including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Corporation to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this 2023 Lease, it being the intention of the parties that the payments required by this 2023 Lease will be paid in full when due without any delay or diminution whatsoever, **SUBJECT ONLY TO THE ANNUALLY RENEWABLE NATURE OF THE CITY'S OBLIGATION TO MAKE PAYMENTS HEREUNDER AS SET FORTH IN SECTION 6.1 HEREOF**, and further subject to the City's rights under Section 9.3 hereof.

Notwithstanding any dispute between the City and the Corporation or the 2023 Trustee, the City shall, during the Lease Term, make all payments of Base Rentals and Additional Rentals in such Fiscal Years and shall not withhold any Base Rentals or Additional Rentals, for which an Appropriation or Supplemental Appropriation has been effected by the City, pending final resolution of such dispute (except to the extent permitted by Sections 8.2 and 9.3 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Corporation or the 2023 Trustee shall affect the City's obligation to pay all Base Rentals and Additional Rentals, for which a specific Appropriation or Supplemental Appropriation has been effected by the City for such purpose, in such Fiscal Years subject to this Article (except to the extent provided by Sections 8.2 and 9.3 hereof with respect to certain Additional Rentals).

**Section 6.4 Nonappropriation; Supplemental Appropriation.** In the event that the City gives notice that it intends to not renew this 2023 Lease as provided by Section 4.1 hereof or the City shall not effect an Appropriation or Supplemental Appropriation, on or before December 31 of each Fiscal Year, of moneys to pay all reasonably estimated Base Rentals and reasonably estimated Additional Rentals coming due for the next ensuing Renewal Term as provided in Section 4.1 hereof and this Article, an Event of Nonappropriation shall be deemed to have occurred; subject, however, to each of the following provisions:

(a) In the event the 2023 Trustee does not receive the written notice provided for by Section 4.1 hereof or evidence that an Appropriation or Supplemental Appropriation has been effected by the City on or before December 31 of a Fiscal Year, then the 2023 Trustee, as the Corporation's assignee, shall declare an Event of Nonappropriation on the first Business Day of the January following such Fiscal Year or such declaration shall be made on any date on which (1) the Trustee receives official, specific written notice from the City that this 2023 Lease will not be renewed or (2) the Trustee has determined that a Supplemental Appropriation has not been effected by the City to provide the Base Rentals remaining to be paid in the then current Lease Term.

(b) The 2023 Trustee shall waive any Event of Nonappropriation which is cured by the City, within 21 days of the receipt of notice by the 2023 Trustee as provided in (a) above, by a duly effected Appropriation or Supplemental Appropriation to pay all Base Rentals and sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Renewal Term.

(c) Pursuant to the terms of the 2023 Indenture, the 2023 Trustee may waive any Event of Nonappropriation which is cured by the City within a reasonable time with the procedure described in (b) above.

In the event that during the Initial Term or any Renewal Term, any Additional Rentals shall become due which were not included in a duly effected Appropriation or Supplemental Appropriation and moneys are not specifically budgeted and appropriated or otherwise made available to pay such Additional Rentals within 60 days subsequent to the date upon which such Additional Rentals are due, an Event of Nonappropriation shall be deemed to have occurred, upon notice by the 2023 Trustee to the City to such effect (subject to waiver by the 2023 Trustee as hereinbefore provided).

If an Event of Nonappropriation occurs, the City shall not be obligated to make payment of the Base Rentals or Additional Rentals or any other payments provided for herein which accrue after the last day of the Initial Term or any Renewal Term during which such Event of Nonappropriation occurs; provided, however, that, subject to the limitations of Sections 6.1 and 14.3 hereof, the City shall continue to be liable for Base Rentals and Additional Rentals allocable to any period during which the City shall continue to occupy, use or retain possession of the Leased Property.

Subject to Section 6.5 hereof, the City shall in all events vacate or surrender possession of the Leased Property by March 1 of the Renewal Term in respect of which an Event of Nonappropriation has occurred.

After March 1 of the Renewal Term in respect of which an Event of Nonappropriation has occurred, the 2023 Trustee, as the Corporation's assignee, may proceed to exercise all or any Lease Remedies.

The City acknowledges and agrees that, upon the occurrence of an Event of Nonappropriation (a) the 2023 Trustee shall be entitled to exercise all remedies set forth in Section 14.2 of this Lease, (b) the 2023 Trustee shall be entitled to all moneys then being held in all funds created under the 2023 Indenture to be used as described therein and (c) all property, funds and rights acquired by the 2023 Trustee upon the termination of this 2023 Lease by reason of an Event of Nonappropriation are to be held and applied by the 2023 Trustee as set forth in the 2023 Indenture.

**Section 6.5 Holdover Tenant.** If the City fails to vacate the Leased Property after termination of this 2023 Lease, with the written permission of the 2023 Trustee, as the Corporation's assignee, it will be deemed to be a holdover tenant on a month-to-month basis, and will be bound by all of the other terms, covenants and agreements of this 2023 Lease. Any holding over by the City without the written permission of the 2023 Trustee shall be at sufferance. The amount of rent to be paid during any period when the City is deemed to be a holdover tenant will

be equal to (a) one sixth of the interest Portion of the Base Rentals coming due on the next succeeding Base Rentals Payment Date plus one twelfth of the Principal Portion of the Base Rentals coming due on the next succeeding Base Rentals Payment Date on which a Principal Portion of the Base Rentals would have been payable with appropriate adjustments to ensure the full payment of such amounts on the due dates thereof in the event termination occurs during a Renewal Term plus (b) Additional Rentals as the same shall become due.

**ARTICLE 7**  
**ACQUISITION, REHABILITATION, CONSTRUCTION,**  
**INSTALLATION OF THE PROJECT; OCCUPANCY AND**  
**MAINTENANCE OF THE LEASED PROPERTY**

**Sections 7.1 through 7.13 relating to the Original Project are set forth in Exhibit F hereto. Sections 7.1 through 7.17 relating to the Improvements Project are set forth below.**

**Section 7.1 Agreement to Acquire, Rehabilitate, Construct, Improve and Install or Maintain.** The Corporation has acquired the Site and Annex I in accordance with the provisions of Exhibit H of the Initial Lease and has taken all other actions and do all things necessary for the rehabilitation and construction of the Original Project consistent with the Build To Suit Provisions of this Lease as set forth in Exhibit F. The Corporation has settled the deed evidencing the acquisition (the Deed) into the Trust in 2003 in connection with the 2003C Indenture. The Deed shall continue to be held in the Trust in respect of the 2023 Lease and the 2008A Indenture. In connection with the construction of the Improvements Project, the Corporation and the City will comply with all applicable provisions of federal and State law, the City's Charter and the DRMC. Subject to Section 8.1 hereof, the City as Lessee will engage a construction contractor to be paid under the terms of the 2008A Indenture and shall order furniture, fixtures, and equipment to be paid under the terms of the 2008A Indenture to accomplish the Improvements Project. All agreements in the Improvements Project shall contain a clause for assignment to the Trustee in the event of Nonappropriation or Lease default. Title to the work completed for the Original Project and the Improvements Project shall be held by the Corporation, subject to this 2023 Lease and the 2008A Indenture. The City shall maintain the Improvements Project after a Certificate of Final Completion with respect to the Improvements Project is filed with the Trustee. All agreements with respect to the Improvements Project may be amended or changed from time-to-time by the written agreement of the construction contractor and Manager of the Department of Transportation and Infrastructure of the City and in purchase orders for the vendors of the furniture, fixtures, and equipment and by Manager of General Services, so long as the amendments do not decrease the value of the Leased Property and such amendment or change shall not require any further amendment of this 2023 Lease.

So long as this 2023 Lease is in full force and effect and no Event of Nonappropriation or Event of Lease Default shall have occurred, the Corporation and the City shall have full power to carry out the acts and agreements provided in this Section 7.1, and such power shall not be terminated or restricted by act of the Corporation, the Trustee or the City, except as provided in this Section 7.1.

The Corporation has acquired the Site and Annex I and agrees to allow the City to contract and issue purchase orders to rehabilitate, construct, make or install or cause to be rehabilitated,

constructed, made or installed the Improvements Project as described in Exhibit J hereto through the application of moneys to be disbursed by the Trustee pursuant to the 2008A Indenture. If for any reason the Improvements Project is not rehabilitated, constructed, made or installed by the date provided in the contracts or purchase orders for the Improvements Project, there shall be no resulting liability on the part of the City or the Corporation (except as otherwise provided in the contracts or purchase order provisions) or an Event of Lease Default hereunder, and there shall be no diminution in or postponement of the Base Rentals and Additional Rentals required to be paid by the City and for which an Appropriation has been effected by the City during the Lease Term. However, in the event that the Trustee shall not receive a Certificate of Final Completion that the Improvements Project have been rehabilitated, constructed, made or installed, as required in Section 7.3 of this 2023 Lease, on or before three years after \_\_\_\_\_, 2023, the Trustee, shall, on behalf of the Corporation as the owner of the Improvements Project, upon 30 days written notice to the Corporation and the City, be authorized, but not required, to rehabilitate, construct, make or install the remainder of the Improvements Project from any moneys remaining for the Improvements Project.

**Section 7.2 Disbursements for Costs of the Improvements Project.** The 2023 Indenture provides that the Trustee shall, at the request of the City, disburse the moneys held by the Trustee in the Project Fund created for this purpose under the 2023 Indenture to pay the Costs of the Project with respect to the Improvements Project. Such disbursements shall be made by the Trustee upon receipt by the Trustee of a requisition for the future quarter's or month's (as requested by the City) anticipated expenses, in substantially the form attached hereto as Exhibit C, signed by either the City's Manager of the Department of Transportation and Infrastructure for construction work or Manager of General Services for furniture fixtures, and equipment, which shall contain, if applicable, the following:

- (a) with respect to each payment to be made, a statement of:
  - (i) the estimated amount to be paid,
  - (ii) that each obligation estimated therein has been properly procured, is a proper charge against the Improvements Project and has not been the basis of any previous withdrawal,
  - (iii) that all conditions required by this 2023 Lease to be met prior to such payment shall have been satisfied before payment is released by the City, and
  - (iv) that the disbursement requested will be used for a Cost of the Project with respect to the Improvements Project.
- (b) reasonable detail of the nature of the obligation and, in the case of a disbursement for items of Equipment, the serial number of all such items;
- (c) for the Original Project only, a statement of the Project Fund amounts which would have been paid to the State of Colorado for sales and use taxes on taxable Project materials and property included within the requisition, had an exemption from such State sales and use taxes not been obtained from the State, as provided in Section 2.05, "State Sales and Use Taxes" of Exhibit E to this Agreement;

(d) a certification by the Corporation's Representative for the Original Project and by the City for the Improvements Project that it will receive and will hold in its records for seven years or other applicable retention period:

(i) a bill, invoice or statement of account for such obligation;

(ii) in the case of a disbursement for items of Equipment, a valid bill of sale, receipt or other evidence of title in the name of the Corporation containing warranties of title free and clear of all claims together with a financing statement in form appropriate to perfect the security interest of the Trustee in such items; and

(iii) Contractor's Certification of payment completed by the contractor for the previous month's payment.

(e) a statement of the City's Representative's reasonable determination that the financing statements included with a requisition, if any, are in form appropriate to perfect the security interest of the Trustee in items of Equipment which are the subject of such requisition (to be filed and held by the Trustee); and

(f) a statement of the City's Representative's reasonable expectation that the Costs of the Project with respect to the Improvements Project will not exceed the amount remaining in the Project Fund created under the Indenture for the purpose of paying the Cost of the Project with respect to the Improvements Project.

The Manager of the Department of Transportation and Infrastructure of the City and the Corporation shall execute such financing statements and other instruments and permit the labeling of the Equipment in connection with each disbursement as may be reasonably required by the Trustee to perfect its security interest in such Equipment.

At least 15 days prior to the beginning of the construction or installation of any future additions or improvements to the Improvements Project by the City, as tenant or lessee, the City shall notify the Corporation and the Trustee thereof and on behalf of the Corporation shall give or cause to be given notice to all contractors, subcontractors and material suppliers as required by Section 38-22-105, CRS that the Corporation's and Trustee's interests in the Improvements Project is not subject to any liens. Prior to the start of any construction or installation of any future additions or improvements to the Improvements Project by the City, as tenant or lessee, and throughout said period of construction and installation, the City will also, for the benefit of the Corporation and the City, post or cause to be posted the notice required by Section 38- 22-105, CRS that the Corporation's and the Trustee's interests in the Improvements Project are not subject to any liens in a conspicuous place on the Improvements Project. Notwithstanding the foregoing and subject to the provisions of Section 8.2 hereof, if a lien is established against the Improvements Project, the City shall not permit such mechanic's or other lien to remain against the Improvements Project for labor or materials furnished to or requested by it in connection with such future additions or improvement to the Improvements Project; provided that if any such lien is established, the City shall either discharge the lien or, in good faith, contest and diligently pursue to conclusion any lien filed or established against the Improvements Project and in such event the City may permit the items so contested to remain undischarged and unsatisfied during the period

of such contest and any appeal therefrom. The Corporation and the Trustee shall cooperate with the City in the discharge or contest process.

If an Event of Nonappropriation or an Event of Lease Default shall occur prior to the Final Completion of the Improvements Project, any moneys held in funds and accounts created under the 2008A Indenture may be utilized by the Trustee on behalf of the Corporation as the owner of the Improvements Project, to complete, repair or modify the Improvements Project, or may be disbursed for the payment of Certificates of Participation or other charges as the Trustee may be directed under the 2023 Indenture.

Under the 2023 Indenture, the City will authorize and direct the Trustee to issue its checks or drafts for each disbursement to pay Costs of the Project with respect to the Improvements Project provided for herein. The 2023 Indenture provides that (a) the Trustee shall keep and maintain adequate records pertaining to the accounts in the Project Fund established under the 2023 Indenture, (b) the Trustee shall make all disbursements from the Project Fund as reasonably directed by the City's Representative, and (c) after the Improvements Project have been rehabilitated, constructed, made or installed and the Certificate of Final Completion with respect to the Improvements Project has been filed with the Trustee as provided in Section 7.3 of this 2023 Lease, and after the City's directions under Section 7.3 hereon with respect to any remaining amounts on deposit with the Trustee are satisfied, the Trustee shall file an accounting thereof with the Corporation and the City.

**Section 7.3 Completion of Rehabilitation, Acquisition, Construction, and Installation.** Upon the Final Completion of the Improvements Project and the acceptance thereof by the City, the City shall deliver to the Trustee a Certificate of Final Completion with respect to the Improvements Project.

In the event that, after the delivery of the Certificate of Final Completion with respect to the Improvements Project, there remains in the Project Fund to be created under the 2023 Indenture any unreserved balance, such balance shall be used by the Trustee, as directed by the City to:

(a) add to, modify or alter the Improvements Project or add new components thereto, or

(b) direct the Trustee to transfer the balance to the Base Rentals Fund to be created under the 2023 Indenture for a credit against the Base Rentals as the same shall become due with a corresponding adjustment in the amount of Base Rentals payable under Exhibit E-2 (Base Rentals Schedule) to this 2023 Lease, or

(c) effect a combination of the foregoing.

Base Rentals to be set forth in Exhibit E-2 (Base Rentals Schedule) to this Lease shall be recalculated by the Trustee in the event of any partial prepayment of Base Rentals.

**Section 7.4 Title Insurance.** On the date the 2000B Lease was executed and delivered, the Corporation provided a standard mortgagee's title insurance policy issued to the 2000B Trustee in an amount equal to no less than the original Lease Balance, insuring the 2000B Trustee's first mortgage interest in the Leased Property subject only to Permitted Encumbrances.



On the date of this 2023A Lease, the Corporation shall have provided a title insurance commitment for an endorsement to the existing lender's title insurance policy for an increased amount of coverage, such that the coverage under the lender's title insurance policy insuring the 2023A Trustee's first mortgage interest in the Leased Property subject only to the Permitted Encumbrances will be equal to the 2023A Lease Balance.

**Section 7.5 Project Contracts.** In the event of cost overruns resulting in the Cost of the Project with respect to the Improvements Project exceeding the amounts available in the Project Fund created under the 2023 Indenture, all in connection with the acquisition of, rehabilitation, construction, making or installation of the Improvements Project, upon written consent of the City, (a) the City shall make such modifications to the plans and specifications for the Improvements Project, as will permit such Improvements Project to be rehabilitated, constructed, otherwise acquired, improved and installed from the amounts available therefor under the 2023 Indenture or (b) the City may request that the Corporation deposit additional funds from the proceeds of additional Certificates of Participation in the Project Fund created under the 2023 Indenture sufficient to complete the Improvements Project.

Upon the occurrence of an Event of Nonappropriation or an Event of Lease Default, the Trustee may, on behalf of the Corporation as owner of the Improvements Project, complete the acquisition of, rehabilitation and construction of the Improvements Project, utilizing any moneys available therefor. All Project Contracts with respect to the Improvements Project shall provide that, upon a termination of the Lease Term by reason of the occurrence of an Event of Nonappropriation or an Event of Lease Default or upon the Trustee's assuming control over completion of the Improvements Project as provided in Section 7.1 of this 2023 Lease, and upon written notice by the Trustee to the party or parties to the Project Contracts that any of such events has occurred: (a) such contracts shall be fully and freely assignable to the Trustee without the consent of any other person and the Trustee may choose to assume or not assume such contracts; and (b) if the Trustee does so assume such contracts, the other party or parties thereto shall perform the agreements contained therein for the Trustee. All Project Contracts shall also provide that, upon an Event of Nonappropriation or an Event of Lease Default and upon written notice from the Trustee, the Trustee may, in its full discretion, terminate some or all of such Project Contracts; and the other party or parties thereto shall then be entitled to payment only from amounts available therefor under the Indenture and only for work done prior to such termination. Except for its Reserved Rights, the Corporation or the City, as applicable, shall assign all of its right, title, and interest in and to any or all Project Contracts to the Trustee and shall deliver all Project Documents held by it to the Trustee.

All Project Contracts entered into by the City shall contain a provision stating that the contractor understands and acknowledges that (a) the relationship of the City and the Corporation under the Lease is that of tenant or lessee and landlord or lessor and not a relationship of partnership, joint venture nor principal agent and (b) the City has not undertaken nor has it assumed any responsibility or duty to the Corporation or any third party (such as the contractor) with respect to the Corporation's obligations relating to the Improvements Project.

**Section 7.6 Project Documents.** The Corporation or the City, as the case may be, shall furnish to the Trustee, on or before the date on which this 2023 Lease is executed and delivered, copies of the Project Documents relating to those Project Contracts to which it is a party and from

time-to-time thereafter as soon as such Project Documents shall become available to the Corporation or the City. Neither the Project Documents nor any change or amendment thereto shall (a) cause the Improvements Project to be used for any purpose prohibited hereby or by the Constitution or laws of the State or the Charter; (b) result in a material reduction in the value of the Original Project or Improvements Project (except as provided in Section 7.5 hereof); or (c) adversely affect the ability of the City to meet its obligations hereunder.

**Section 7.7 Defaults Under Project Contracts.** In the event of any material default by a contractor under any of the Project Contracts, or in the event of a material breach of warranty with respect to any materials, workmanship, or performance, the Corporation or the City, as the case may be, shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of such Project Contracts. The Net Proceeds of any amounts recovered by way of damages, liquidated damages, refunds, adjustments, or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorneys' fees and costs) shall be paid to the Trustee, as the Corporation's assignee, for deposit to the Base Rentals Fund created under the Indenture.

**Section 7.8 Performance and Payment Bonds.** The contractor under any Project Contract for construction, including the Improvements Project Design Build Contract, shall be required to furnish a performance and labor and material payment bond on forms acceptable to the City, copies of which shall be provided to the Trustee. Such bonds shall be made payable to the City and the Trustee, as their interests may appear, and shall be executed by a corporate surety listed in the most current edition of the Federal Register and each succeeding year as approved to write bonds for governmental entities, licensed to transact business in the State, acceptable to the Trustee and shall be in an amount at least equal to the contract price for such Project Contract, as the case may be, provided the bond amount does not exceed said surety's authorized capacity. If, at any time during the construction of the Improvements Project, the surety on such bond shall be disqualified from doing business within the State, an alternate surety meeting the requirements set forth above and acceptable to the City shall be selected. In the event of any change order resulting in the performance of additional work in connection with the Improvements Project, the amounts of such bonds shall be increased by an amount at least equal to the cost of such additional work or materials or fixtures to be incorporated in the Improvements Project.

**Section 7.9 Commercial General Liability Insurance; Business Automobile Liability Insurance; Pollution/Environmental Impairment Insurance.** Each contractor entering into a Project Contract, including the Improvements Project Design Build Contract, shall be required to procure and maintain at all times during the term of the Project Contract a business automobile liability and a commercial general liability insurance policy, as well as the other types of insurance provided below, in a form and by a company acceptable to and approved by the City and acceptable to the City covering all operations hereunder, including the following minimum amounts:

(a) **Business Automobile Liability.** The City shall cause each contractor entering into a Project Contract for the Improvements Project to maintain Business Automobile Liability, or its equivalent, 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. If transporting

wastes, hazardous material, or regulated substances, the City shall cause each Improvements Project contractor to carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy; and

(b) **Commercial General Liability Insurance.** The City shall cause each contractor entering into a Project Contract for the Improvements Project to 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 a \$2,000,000 policy aggregate.

Commercial general liability coverage shall include the Corporation, the City and the Trustee as additional insureds.

(c) **Contractors Pollution/Liability Including Errors and Omissions Insurance:** The City shall cause each contractor entering into a Project Contract for the Improvements Project to maintain a Pollution/Liability insurance policy with minimum limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate and such policy shall (a) include coverage for errors and omissions, bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and clean-up costs and (b) include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

#### **Section 7.10 Builder's Risk or Installation Floater Insurance; Professional Liability Insurance for Design.**

(a) **Builder's Risk or Installation Floater Insurance:** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract for the Improvements Project to procure and maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The City and County of Denver, Contractor, and subcontractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the Improvements Project by the City.

(b) **Professional Liability (Errors and Omissions) Insurance:** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract for the Improvements Project for design, engineering and construction supervision to provide Professional Liability insurance for the design, engineering, construction supervision, and any and all other professional services of the Improvements Project that maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

Section 9.4 of this Lease sets forth the obligations of the City to maintain certain insurance in respect of the Improvements Project in the amounts and under the circumstances described therein.

**Section 7.11 Worker's Compensation Insurance.** For the duration of the 2023 Lease each Improvements Project contractor and vendor entering into a Project Contract shall be required to procure and maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with minimum 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 claim.

**Section 7.12 Umbrella Liability Insurance; Waiver of Subrogation; Insurance Certificates; Insurers' Ratings; Proceeds of Certain Insurance Policies and Performance Bonds.** The City shall provide or cause each contractor entering into a Project Contract for the Improvements Project to procure and maintain, at its own cost and expense, during the term of the Project Contract and until the facilities to be constructed under Exhibit F have been accepted by the City, Umbrella Liability insurance covering excess over all primary worker's compensation, commercial general liability and business automobile insurances as required hereinabove \$25,000,000. Coverage must be written on a "follow form" or broader basis. Any combination of primary and excess coverage may be used to achieve required limits.

The City shall cause, or require that all contractors entering into a Project Contract shall cause, to be executed an original of the form certificate of insurance, preferably an ACORD form of insurance specifying on the certificate the issuing company or companies, policy numbers and policy periods, for each required coverage. One original of the completed and fully executed certificate shall be submitted to the City's Risk Administrator prior to the execution of the Project Contract. The City's acceptance of any submitted certificate is subject to the approval of the City's Risk Administrator.

Each such policy and certificate shall contain valid provisions or endorsements stating "This policy will not be cancelled or materially changed or altered without first giving forty-five days prior written notice thereof (ten days for nonpayment of premium) to the Manager of the Department of Transportation and Infrastructure, City and County of Denver, City and County Building, Denver, Colorado 80202, sent by certified mail, return receipt requested" and "Any coverage afforded the City and County of Denver as additional insured shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and non-contributing insurance."

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. 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, Contractor 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).

The Net Proceeds of any performance or payment bond or insurance policy required by Sections 7.8 and 7.10 of this 2023 Lease, and any Net Proceeds received as a consequence of default under a Project Contract as provided by Section 7.7 of this 2023 Lease, shall be paid to and deposited with the Trustee as provided in the 2023 Indenture.

**Section 7.13 Governing Provisions.** With respect to the Original Project, the provisions of the Article 7 (ACQUISITION, REHABILITATION, CONSTRUCTION, INSTALLATION OF THE PROJECT; OCCUPANCY AND MAINTENANCE OF THE PROJECT) of the 2003C Lease and Exhibit F (Build to Suit Provisions) of the 2000B Lease, as amended and restated by the 2003C Lease, which are set forth in Exhibit F to this Fourth Amended and Restated Build to Suit Lease Purchase Agreement No. 2023, remain in full force and effect and the duties and liabilities of the parties thereto with respect to such provisions have not changed. However, the parties recognize that as of the date of this 2023 Lease, the Certificate of Final Completion with respect to the Original Project had been delivered to the 2003C Trustee.

As provided in the Certificate of Final Completion with respect to the Original Project at paragraph 2, certain amounts remaining to be paid from the Original Project Fund were set aside and set forth in the 2003C Indenture. Final disbursements from the Original Project Fund have been made by the Trustee and the Original Project Fund under the 2003C Indenture has been closed.

**Section 7.14 Corporation's OCIP Insurance.** For the Original Project only, an Owner Controlled Insurance Program (the "OCIP") of the Corporation was provided under the provisions of Exhibit F (Sections 7.1 through 7.13 of 2008A Lease and Build to Suit Provisions) of this 2023 Lease.

**Section 7.15 Project Contract Insurance.** Project Contracts entered into after the date hereof shall be subject to a Professional Liability Insurance requirement of [\$1 million] dollars coverage rather than the coverage requirement set forth in the 2000B Lease, and such Project Contracts shall not be subject to the requirements set forth in Exhibit F to this 2023 Lease pertaining to Contractor's Pollution/ Environmental Impairment Insurance, and Umbrella Liability Insurance, except that if any Project Work to be performed under such a Project Contract shall exceed Five Million Dollars in value or significant excavation or handling of significant quantities of potentially hazardous materials will occur, then insurance requirements for such work shall be as determined by the City's Risk Manager.

## **ARTICLE 8 TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES**

**Section 8.1 Title to the Leased Property.** Except for personal property purchased by the City at its own expense pursuant to Section 9.2 of this 2023 Lease, title to the Leased Property and any and all additions and modifications thereto and replacements thereof shall be held in the name of the Corporation until the 2023 Trustee has exercised Lease Remedies or until the Leased Property is conveyed as provided in Article 12 of this 2023 Lease, notwithstanding (a) the occurrence of an Event of Nonappropriation; (b) the occurrence of one or more Events of Lease Default; (c) the occurrence of any event of damage, destruction, condemnation, or, construction,

manufacturing or design defect or title defect, as provided in Article 10 of this 2023 Lease; or (d) the violation by the Corporation (or by the 2023 Trustee as assignee of the Corporation) of any provision of this 2023 Lease.

The City shall have no right, title or interest in the Leased Property or any additions and modifications thereto or replacements thereof, except as expressly set forth in this 2023 Lease. The Corporation may mark any Equipment (not already marked) included in the Leased Property which does not bear a serial number with signs or labels declaring that such Equipment is “OWNED BY CIVIC CENTER OFFICE BUILDING INC., DENVER, COLORADO.”

**Section 8.2 No Encumbrance, Mortgage or Pledge of the Leased Property.** Except as may be permitted by this 2023 Lease, neither the Corporation nor the City shall permit any mechanic’s or other lien to be established or remain against the Leased Property; provided that, if the City or the Corporation, at the request of the City, as the case may be, shall first notify the 2023 Trustee, as the Corporation’s assignee, of the intention of the City or the Corporation, as the case may be, to do so, the City or the Corporation, at the request of the City, may in good faith contest any mechanic’s or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom if the City shall notify the 2023 Trustee and the Corporation that, in the opinion of Counsel, by nonpayment of any such items the Corporation’s title to the Leased Property or the lien on the Leased Property pursuant to the 2023 Indenture will not be materially endangered, or the Leased Property or any part thereof will not be subject to loss or forfeiture, otherwise the Corporation, with funds provided by the City, or the City shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Corporation, the City and the 2023 Trustee will cooperate in any such contest. Except as may be permitted by this 2023 Lease, neither the Corporation nor the City shall directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City and the Corporation shall promptly take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

## **ARTICLE 9 MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES**

**Section 9.1 Maintenance of the Leased Property by the City.** Subject to its right to not appropriate and as otherwise provided in Section 10.3 hereof, the City agrees that, at all times during the Lease Term, the City will maintain, preserve and keep the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, and that the City will from time-to-time make or cause to be made all necessary and proper repairs, including replacements, if necessary. Neither the Corporation nor the 2023 Trustee shall have any responsibility in any of these matters or for the making of any additions, modifications or replacements to the Leased Property.

**Section 9.2 Modification of the Leased Property; Installation of Furnishings and Machinery of the City.** The City shall have the privilege of making substitutions, additions,

modifications and improvements to the Leased Property, at its own cost and expense, as appropriate and the same shall be the property of the Corporation subject to this 2023 Lease and the 2023 Indenture and shall be included under the terms of this 2023 Lease and the 2023 Indenture and, if Equipment, marked as required by Section 8.1 hereof; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Leased Property or cause the Leased Property to be used for purposes other than lawful governmental or proprietary functions of the City (except to the extent of subleasing permitted under Section 13.2 hereof) and provided that the Leased Property, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Leased Property immediately prior to such making of substitutions, additions, modifications and improvements.

The City may also, from time-to-time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Leased Property. All such machinery, equipment and other tangible property shall remain the sole property of the City in which neither the Corporation nor the 2023 Trustee shall have any interests; provided, however, that title to any such machinery, equipment and other tangible property which becomes permanently affixed to the Leased Property shall be in the Corporation, subject to the 2023 Indenture, and shall be included under the terms of this 2023 Lease and the 2023 Indenture, in the event the 2023 Trustee shall reasonably determine that the Leased Property would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**Section 9.3 Taxes, Other Governmental Charges and Utility Charges.** In the event that the Leased Property shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall pay the amount of all such taxes, assessments and governmental charges then due, as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during the upcoming Fiscal Year. Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property (including, without limitation, any taxes levied upon the Leased Property which, if not paid, will become a charge on the rentals and receipts from the Leased Property, or any interest therein, including the interest of the Corporation or the 2023 Trustee), or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property. ·

The City may, at its expense, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom if the City shall notify the 2023 Trustee that, in the opinion of Counsel, by nonpayment of any such items the value of the Leased Property will not be materially endangered or the Leased Property will not be subject to loss or forfeiture, or the Corporation or the 2023 Trustee will be subject to liability, otherwise such taxes, assessments, utility or other charges shall be paid forthwith (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such taxes, assessments, utility or other charges).

**Section 9.4 Provisions For Liability, Property and Worker's Compensation Insurance.** The City shall, at its own expense, cause casualty and/or property insurance to be carried and maintained with respect to the Leased Property in an amount equal to the estimated replacement cost of the Leased Property. The City may, in its discretion, insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other property as well, as long as such blanket insurance policies comply with the requirements hereof. Any property damage insurance policy required by this Section shall be so written or endorsed as to show the 2023 Trustee as a mortgagee/trustee and/or loss payee and/or additional insured.

The City shall, at its own expense, cause commercial general liability insurance and public liability insurance, including blanket contractual liability or specific contractual liability insurance for this 2023 Lease, to be carried and maintained in connection with the use and possession of the Leased Property. This coverage may be limited by endorsement to the Leased Property. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act, as the same may from time-to-time be amended for claims to which the defense of sovereign immunity applies. The public liability insurance required by this Section may be by blanket insurance policy or policies.

The City shall, at its own expense, cause worker's compensation insurance to be procured and maintained covering the City's employees working in or on the Leased Property. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be cancelled without at least 30 days' prior written notice (10 days' prior written notice for nonpayment of premiums) to the City, the Corporation and the 2023 Trustee. In the event the City receives such notice of cancellation, it shall also immediately notify the Corporation and the 2023 Trustee of any cancellation notice. A certificate issued by the worker's compensation carrier evidencing such coverage shall be provided by the City to the Corporation and the 2023 Trustee. The worker's compensation insurance required by this Section may be by blanket insurance policy or policies. The City may self-insure for worker's compensation insurance provided that such self-insurance (a) is approved by the Colorado Department of Labor's Division of Worker's Compensation and (b) the self-insurance fund is held in a trust fund created for this purpose.

Each property and liability policy, other than worker's compensation, provided for in this Section shall contain a provision to the effect that the insurance company shall not cancel the policy without at least 30 days' prior written notice (10 days' prior written notice for nonpayment of premiums) to the City, the Corporation and the 2023 Trustee. In the event that the City has received such notice of cancellation it shall immediately notify the Corporation and the 2023 Trustee.

The City shall provide certificates of insurance with appropriate endorsements attached evidencing that the Corporation and the 2023 Trustee have been named as mortgage/trustee and/or loss payee and/or additional insureds as applicable and that the 30-day required notice of cancellation provision is in effect. A certificate of insurance will be acceptable evidence of insurance at closing. Certificates evidencing all insurance policies issued pursuant to this Section shall be deposited with the 2023 Trustee.

**Section 9.5 Reserved.**



**Section 9.6 Advances.** If the City fails to pay any Additional Rentals during the Lease Term as such Additional Rentals become due, the Corporation or the 2023 Trustee may (but shall not be obligated to) pay such Additional Rentals and the City agrees to reimburse the Corporation or the 2023 Trustee, as the case may be, to the extent permitted by law and subject to appropriation as provided under Article 6 hereof.

**Section 9.7 Granting of Easements.** As long as no Event of Nonappropriation or Event of Lease Default shall have happened and be continuing, the Corporation and the 2023 Trustee, as the Corporation's assignee, shall, upon the request of the City, (a) grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property or rights included in this 2023 Lease and the 2023 Indenture, free from this 2023 Lease and the 2023 Indenture and any security interest or other encumbrance created hereunder or thereunder; (b) release existing easements, licenses, rights-of-way, and other rights and privileges with respect to such property or rights, with or without consideration; and (c) execute and deliver any instrument necessary or appropriate to grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (i) a copy of the instrument of grant or release and (ii) a written application signed by the Manager of the Department of Transportation and Infrastructure of the City requesting such grant or release and stating that such grant or release will not impair the effective use or interfere with the operation of the Leased Property.

**Section 9.8 Replacement and Substitution of Equipment.** Following the completion of the Improvements Project, in any instance where the City determines any Equipment included in the Leased Property has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the City may (on behalf of the Corporation) sell, trade-in, exchange or otherwise dispose of it (as a whole or in part) without any responsibility or accountability to the Corporation or the 2023 Trustee therefor, provided that the City shall either:

(a) Substitute and install (by direct payment of the costs thereof or by designating equipment, machinery or other personal property not previously included as an Equipment component of the Leased Property) other equipment, machinery or related property having equal or greater value and utility (but not necessarily having the same function); provided, however, that such substituted equipment, machinery or related property will have a useful life of not less than the remaining useful life of the Equipment component of the Leased Property for which it is substituted and the substituted equipment, machinery or related property will be deemed to be amortized on the date or dates set forth in Exhibit E (Base Rentals Schedule) with respect to the original Equipment component of the Leased Property; or

(b) Not make any such substitution and installation, provided that the City shall proceed as follows if such items of Equipment were originally acquired and installed in the Leased Property at a cost in excess of \$10,000: (1) in the case of the sale or other disposition of any such Equipment to anyone other than itself or in the case of the scrapping thereof, the City shall pay to the 2023 Trustee, as the Corporation's assignee, for deposit into the Base Rentals Fund created under the 2023 Indenture the net proceeds from such sale or other disposition, or the scrap value thereof, as the case may be, (2) in the case of the trade-in of such Equipment for other machinery, equipment or related property not to be included in the Leased Property subject to this 2023 Lease, the City shall pay to the 2023 Trustee, for deposit into the Base Rentals Fund the amount of the

credit received by it in such trade-in and (3) in the case of the sale or other disposition of any such Equipment to the City, the City shall pay to the 2023 Trustee for deposit into the Base Rentals Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting practices.

The removal from the Leased Property of any portion of the Equipment pursuant to the provisions of this Section shall not entitle the City to any postponement, abatement or diminution of the Base Rentals or other payments required to be made under Section 6.2 hereof.

The City will maintain written records and make them available upon request of the 2023 Trustee of each removal, substitution, sale or other disposition under subparagraphs (a) and (b) of this Section if such reported item of Equipment was originally acquired and installed in the Leased Property at a cost in excess of \$10,000 per piece of Equipment and shall certify to the 2023 Trustee, upon request of the 2023 Trustee, that each such removal, substitution, sale or other disposition conforms to the requirements of this Section 9.8 and will pay to the 2023 Trustee all amounts required by subparagraph (b) of this Section to be paid into the Base Rentals Fund promptly after any subsequent sale, trade-in or other disposition requiring such payment. All substituted machinery, equipment or related property installed pursuant to this Section shall be free of all liens and encumbrances (other than Permitted Encumbrances) and shall become a part of the Leased Property and subject to the lien of the 2023 Indenture. The City will not dispose of, or permit the disposition of, any of the Equipment except in accordance with this Section or in accordance with Article 10 of this 2023 Lease. The Corporation and the 2023 Trustee will cooperate with the City in implementing the City's rights to dispose of Equipment components of the Leased Property pursuant to this Section and will execute any and all conveyances, releases or other documents necessary or appropriate in connection therewith.

## **ARTICLE 10**

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 10.1 Damage, Destruction and Condemnation.** If, during the Lease Term,

(a) the Leased Property shall be destroyed (in whole or in part), or damaged by fire or other casualty; or

(b) title to, or the temporary or permanent use of, the Leased Property or the estate of the City, the Corporation or the 2023 Trustee in the Leased Property is taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or

(c) a breach of warranty or a material defect in the construction, manufacture or design of the Leased Property becomes apparent; or

(d) title to or the use of the Leased Property is lost by reason of a defect in title thereto;

then the City shall be obligated to continue to pay Base Rentals and Additional Rentals (subject to Article 6 hereof).

**Section 10.2 Obligation to Repair and Replace the Leased Property.** The City and the 2023 Trustee, to the extent Net Proceeds are within their respective control, shall cause such Net Proceeds to be deposited in a separate trust fund. All Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the 2023 Trustee or the City upon receipt of requisitions acceptable to the 2023 Trustee signed by the Manager of the Department of Transportation and Infrastructure or the Manager of General Services, as applicable, of the City stating with respect to each payment to be made;

- (a) the requisition number;
- (b) the name and address of the person, firm or corporation to whom payment is due;
- (c) the amount to be paid; and
- (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

The City, the Corporation and the 2023 Trustee agree to cooperate and use their best reasonable efforts to enforce claims which may arise in connection with material defects in the construction, manufacture or design of the Leased Property or otherwise. If there is a balance of any Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed, this balance shall be used by the City, to:

- (a) add to, modify or alter the Leased Property or add new components thereto, or
- (b) prepay the Base Rentals with a corresponding adjustment in the amount of Base Rentals payable under Exhibit E (Base Rentals Schedule) to this 2023 Lease or
- (c) accomplish a combination of (a) and (b).

Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the property of the Corporation, subject to this 2023 Lease and the 2023 Indenture and shall be included as part of the Leased Property under this 2023 Lease and the Mortgaged Property under the 2023 Indenture.

**Section 10.3 Insufficiency of Net Proceeds.** If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property required under Section 10.2 of this 2023 Lease, the City may elect to:

- (a) complete the work or, with the written consent of the 2023 Trustee, replace such Leased Property (or portion thereof) with similar property of a value equal to or in excess of such portion of the Leased Property and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the City are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the

provisions of this paragraph, the City shall not be entitled to any reimbursement therefor from the Corporation or the 2023 Trustee, nor shall the City be entitled to any diminution of the Base Rentals and Additional Rentals, for which a specific Appropriation or Supplemental Appropriation has been effected by the City for such purpose, payable under Article 6 of this 2023 Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article 12 of this 2023 Lease, or, with the written consent of the 2023 Trustee, an appropriate portion thereof. In the event of an insufficiency of the Net Proceeds for such purpose, the City shall, subject to the limitations of Section 6.1 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributable to the Leased Property for which Net Proceeds have been received (as certified to the 2023 Trustee by the City); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be used as directed by the City in the same manner as set forth in Section 10.2 hereof; or

(c) if the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, an Event of Nonappropriation will be deemed to have occurred, subject to the City's right to cure, the 2023 Trustee may pursue remedies available to it following an Event of Nonappropriation, and, to the extent that such payments have been appropriated by the City, the City shall pay all Additional Rentals then due and owing.

The above referenced election shall be made by the City within 90 days of the occurrence of an event specified in Section 10.1 of this 2023 Lease.

**Section 10.4 Cooperation of the Corporation.** The Corporation shall cooperate fully with the City and the 2023 Trustee in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 10.1 of this 2023 Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property and the enforcement of all warranties relating to the Leased Property. The Corporation hereby assigns to the 2023 Trustee its interests in all such policies, bonds and actions for such purposes. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim performance or payment bond claim, prospective or pending condemnation proceeding with respect to the Leased Property without the written consent of the 2023 Trustee and the City. The City acknowledges that while the Corporation shall be obligated to fully cooperate in the matters described above, the Corporation is not a loss payee or additional insured with respect to the casualty insurance to be maintained with respect to the Leased Property, and as a result, the Corporation shall have no obligation with respect to the repair or replacement of the Leased Property, or any components thereof, from such Net Proceeds, provided, however, that nothing herein shall relieve the 2023 Trustee from performing its obligations as set forth in this Article 10.

## **ARTICLE 11**

### **DISCLAIMER OF WARRANTIES; OTHER COVENANTS**

**Section 11.1 Disclaimer of Warranties.** THE CORPORATION AND THE CITY UNDERSTAND THAT, EXCEPT AS OTHERWISE PROVIDED HEREIN, THE 2023 TRUSTEE WILL NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION,

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. THE CITY HEREBY ACKNOWLEDGES AND DECLARES THAT THE CITY IS SOLELY RESPONSIBLE FOR THE MAINTENANCE AND OPERATION OF THE LEASED PROPERTY FOLLOWING FINAL COMPLETION OF THE LEASED PROPERTY, AND THAT NEITHER THE CORPORATION NOR THE 2023 TRUSTEE HAS ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Corporation constitutes and appoints the City as its attorney in fact for the purpose of asserting and enforcing, at the sole cost and expense of the City, all manufacturer's warranties and guaranties, express or implied, with respect to the Leased Property, as well as any claims or rights the Corporation or the 2023 Trustee may have in respect of the Leased Property against any manufacturer, supplier, contractor or other person. Except as otherwise provided in this 2023 Lease, neither the Corporation nor the 2023 Trustee shall be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this 2023 Lease or the existence, furnishing, functioning or use by the City of any item, product or service provided for herein except that nothing shall relieve the 2023 Trustee's liability for any claims, damages, liability or court awards, including costs, expenses and attorney fees, relating to or resulting from the negligence, bad faith or intentional misconduct of the Trustee or its employees.

**Section 11.2 Further Assurances and Corrective Instruments.** The Corporation and the City agree that they will, from time-to-time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereof or supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

**Section 11.3 Compliance with Requirements.** During the Lease Term, the City, the Corporation and the 2023 Trustee shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property, provided that the City, the Corporation or the 2023 Trustee may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Leased Property.

**Section 11.4 Tax Covenants.** The City acknowledges that the moneys in all funds and accounts expected to be created under the 2023 Indenture are to be invested or deposited by the 2023 Trustee, with the written acknowledgment of the City. The City certifies and covenants that it will not knowingly acknowledge or otherwise cause the investment or use of any moneys related to this 2023 Lease in a manner which will cause this 2023 Lease and, in turn, Certificates of Participation to be classified as "arbitrage bonds" within the meaning of the Code.

The City further covenants for the benefit of the Owners of the 2023 Certificates of Participation that it will not take any action or omit to take any action with respect to the 2023 Certificates of Participation, the proceeds thereof, any other funds of the City or any facilities financed or refinanced with the proceeds of the 2023 Certificates of Participation (except for the possible exercise of the City's right to terminate this 2023 Lease as provided herein) if such action or omission (i) would cause the interest on the 2023 Certificates of Participation to lose its

exclusion from gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the 2023 Certificates of Participation to lose its exclusion from alternative minimum taxable income as defined in Section 55(b) of the Code, or (iii) would cause interest on the 2023 Certificates of Participation to lose its exclusion from Colorado taxable income or to lose its exclusion from Colorado alternative minimum taxable income under present Colorado law. Subject to the City's right to terminate this 2023 Lease as provided herein, the foregoing covenant shall remain in full force and effect, notwithstanding the payment in full or defeasance of the 2023 Certificates of Participation, until the date on which all obligations of the City in fulfilling the above covenant under the Code and Colorado law have been met. The City has the right to enter into contracts for janitorial and other services contracts for the maintenance of the Leased Property and for the operation and management of the Leased Property; provided, however, any such contracts shall be in compliance with the Code (to maintain the tax-exempt status of the Interest Portion of the Base Rentals).

**Section 11.5 Covenant to Defend.** From and to the extent of Net Proceeds, the City shall and hereby agrees to defend the Corporation and the 2023 Trustee against all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the conduct or management of the Leased Property or from any work or thing done on the Leased Property during the Lease Term requested by the City, or from any condition of the Leased Property caused by the City. This duty to defend is not an indemnification and it is expressly understood that the City is not indemnifying the Corporation or the 2023 Trustee and, as previously stated, is limited to Net Proceeds and moneys, if any, in excess of such Net Proceeds, which have been specifically appropriated for such purpose.

**Section 11.6 Access to the Leased Property; Rights to Inspect Books.** The City agrees that the Corporation and the 2023 Trustee, as the Corporation's assignee, shall have the right at all reasonable times to examine and inspect the Leased Property and all of the City's books and records with respect thereto. The City further agrees that the Corporation and the 2023 Trustee shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the City to perform its obligations under this 2023 Lease. The Corporation agrees that it shall make provision under the 2023 Indenture for the City to have the right at all reasonable times to examine and inspect all of the 2023 Trustee's books and records with respect to the Leased Property and all funds and accounts held under the 2023 Indenture.

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, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Corporation's performance relating to the Leased Property, provision of any goods or services to the City, and any other transactions related to this 2023 Lease. The Corporation 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 2023 Lease or expiration of the applicable statute of limitations. When conducting an audit of this 2023 Lease, 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 Corporation to make disclosures in violation of state or federal privacy laws. Corporation shall at all times comply with D.R.M.C. 20-276.

## **ARTICLE 12 PURCHASE OPTION**

**Section 12.1 Purchase Option.** The City shall have the option to purchase the Leased Property, but only if it is not then in default under this 2023 Lease. The City may exercise its option on any date by complying with one of the conditions set forth in Section 12.2. The City shall give the 2023 Trustee notice of its intention to exercise its option not less than 45 days in advance of the date of exercise and shall deposit the required moneys with the 2023 Trustee by not later than the selected date for payment of the Purchase Option Price. If the City exercises its option to purchase the Leased Property pursuant to this Section, any amount then on hand in the Base Rentals Fund created under the 2023 Indenture, shall be applied toward the payment of the applicable Purchase Option Price to be paid by the City. If the City shall have given notice to the 2023 Trustee of its intention to purchase the Leased Property or prepay Base Rentals with the Approval of Special Counsel as provided in Section 6.2(c) hereof, but shall not have deposited the amounts with the 2023 Trustee on the date specified in such notice, the City shall continue to pay Base Rentals, which have been specifically appropriated by the City for such purpose, as if no such notice had been given.

**Section 12.2 Conditions for Purchase Option.** Unless this 2023 Lease shall be amended and restated for the purpose of refunding this 2023 Lease, the Corporation shall transfer and convey the Leased Property to the City in the manner provided for in Section 12.3 of this 2023 Lease; provided, however, that prior to such transfer and conveyance, either:

(a) the City shall have paid the then applicable Purchase Option Price which shall equal the sum of the amount necessary to defease and discharge the 2023 Indenture as may be provided therein plus all then current Additional Rentals required to be paid hereunder; or

(b) the City shall have paid all Base Rentals due under this 2023 Lease and set forth in in Exhibit E (Base Rentals Schedule) hereto, for the entire maximum Lease Term, and all then current Additional Rentals required to be paid hereunder.

**Section 12.3 Manner of Conveyance.** At the closing of the purchase or other conveyance of the Leased Property pursuant to Section 12.2 of this 2023 Lease, the Corporation and the 2023 Trustee shall release and terminate this 2023 Lease and the 2023 Indenture and execute and deliver to the City all necessary documents assigning, transferring and conveying good and marketable title to the Leased Property, as they then exist, subject only to the following:

(a) Permitted Encumbrances, other than this 2023 Lease and the 2023 Indenture;

(b) all liens, encumbrances and restrictions created or suffered to exist by the Corporation or the 2023 Trustee as required or permitted by this 2023 Lease and the 2023 Indenture or arising as a result of any action taken or omitted to be taken by the Corporation or the 2023 Trustee as required or permitted by this 2023 Lease or the 2023 Indenture; and

(c) any lien or encumbrance created by action of the City.

In order to facilitate the Corporation's obligations to release this 2023 Lease and convey the Leased Property to the City as provided herein, the Corporation agrees to deposit in escrow with the 2023 Trustee, a release of this 2023 Lease and release of deed to the Leased Property in form satisfactory to the City.

### **ARTICLE 13 ASSIGNMENT AND SUBLEASING**

**Section 13.1 Assignment by the Corporation.** This 2023 Lease, the Corporation's rights under this 2023 Lease, including rights to receive and enforce payments hereunder (except the Reserved Rights) and the Leased Property and reversions, if any, therein, have been assigned to the 2023 Trustee pursuant to the 2023 Indenture and the 2023 Assignment and assumed by the 2023 Trustee under the 2023 Assumption Agreement.

**Section 13.2 Assignment and Subleasing by the City.** This 2023 Lease may not be assigned by the City for any reason other than to a successor by operation of law. However, the Leased Property may be subleased, as a whole or in part, by the City, without the necessity of obtaining the consent of the Corporation or the 2023 Trustee, subject to each of the following conditions:

(a) The Leased Property may be subleased, in whole or in part, only to an agency or department of, or a political subdivision of, the State, or to another entity or entities with Approval of Special Counsel;

(b) This 2023 Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City, and the City shall maintain its direct relationships with the Corporation and the 2023 Trustee, notwithstanding any sublease; and

(c) The City shall furnish or cause to be furnished to the 2023 Trustee a copy of any sublease agreement.

### **ARTICLE 14 EVENTS OF LEASE DEFAULT AND REMEDIES**

**Section 14.1 Events of Lease Default Defined.** Any one of the following shall be Events of Lease Default under this 2023 Lease:

(a) failure by the City to pay any Base Rentals or Additional Rentals, which have been specifically appropriated by the City for such purpose, during the Initial Term or any Renewal Term, within five Business Days of the date on which they are due; or

(b) subject to the provisions of Section 6.5 hereof, failure by the City to vacate or surrender possession of the Leased Property by March 1 of any Renewal Term in respect of which an Event of Nonappropriation has occurred; or

(c) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in (a) or (b), for a period of 45 days after written notice, specifying such failure and requesting that it be remedied shall be



received by the City from the 2023 Trustee, as the Corporation's assignee, unless the 2023 Trustee shall agree in writing to an extension of such time prior to its expiration; provided that if the failure stated in the notice cannot be corrected within the applicable period, the 2023 Trustee shall not withhold its consent to an extension of such time if, in the 2023 Trustee's reasonable judgment, corrective action can be instituted by the City within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 14.1 are subject to the following limitations:

(i) the City shall be obligated to pay the Base Rentals and Additional Rentals, which have been specifically appropriated by the City for such purpose, only during the Lease Term, except as otherwise expressly provided in this 2023 Lease; and

(ii) if, by reason of *Force Majeure*, the City or the Corporation shall be unable in whole or in part to carry out any agreement on their respective parts herein contained other than the City's agreement to pay the Base Rentals and Additional Rentals due hereunder, the City or the Corporation, as the case may be, shall not be deemed in default during the continuance of such inability. The City and the Corporation each agree, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City or the Corporation, as the case may be, from carrying out their respective agreements; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

**Section 14.2 Remedies on Default.** Whenever any Event of Lease Default shall have happened and be continuing beyond any applicable cure period, the 2023 Trustee, on behalf of the Corporation, may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The 2023 Trustee, on behalf of the Corporation, may terminate the Lease Term and give notice to the City to vacate and surrender possession of the Leased Property which vacation and surrender the City agrees to complete within sixty (60) days from the date of such notice. In the event the City has not vacated and surrendered possession, the provisions of Section 6.5 hereof may apply, at the sole discretion of the Corporation and the 2023 Trustee.

(b) The 2023 Trustee may proceed to foreclose through the courts on all or any part of the Leased Property to the extent permitted a mortgagee by the laws of the State and exercise all rights and remedies of a secured party under the Uniform Commercial Code of the State with respect thereto or otherwise sell, trade-in, repossess or liquidate the Leased Property or any part thereof in any lawful manner.

(c) The 2023 Trustee may, on behalf of the Corporation, lease or sublease the Leased Property or sell an assignment of any interest the 2023 Trustee or the Corporation has in the Leased Property.

(d) The 2023 Trustee, on behalf of the Corporation, may recover from the City:

(i) the portion of Base Rentals and Additional Rentals, for which a specific Appropriation or Supplemental Appropriation has been effected by the City for such purpose,

which would otherwise have been payable hereunder, during any period in which the City continues to occupy, use or possess the Leased Property; and

(ii) Base Rentals and Additional Rentals, for which a specific Appropriation has been effected by the City for such purpose, which would otherwise have been payable by the City hereunder during the remainder, after the City vacates and surrenders possession of the Leased Property, of the Fiscal Year in which such Event of Lease Default occurs.

(e) The 2023 Trustee, on behalf of the Corporation, may take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this 2023 Lease and the 2023 Indenture.

**Section 14.3 Limitations on Remedies.** The remedies in connection with an Event of Lease Default shall be limited as set forth in this Section. A judgment requiring a payment of money may be entered against the City by reason of an Event of Lease Default only as to the City's liabilities described in paragraph (d) of Section 14.2 hereof. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to vacate and surrender possession of the Leased Property as required by Section 6.4 of this 2023 Lease, and only as to the liabilities described in paragraph (d)(i) of Section 14.2 hereof. The remedy described in paragraph (d)(ii) of Section 14.2 of this 2023 Lease is not available for an Event of Lease Default consisting of failure by the City to vacate and surrender possession of the Leased Property by the March 1 following an Event of Nonappropriation.

**Section 14.4 No Remedy Exclusive.** Subject to Section 14.3 hereof, no remedy herein conferred upon or reserved to the 2023 Trustee, on behalf of the Corporation, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time-to-time and as often as may be deemed expedient. In order to entitle the 2023 Trustee, on behalf of the Corporation, to exercise any remedy reserved in this Article 14, it shall not be necessary to give any notice, other than such notice as may be required in this Article 14.

**Section 14.5 Waivers.** The 2023 Trustee, on behalf of the Corporation, may waive any Event of Lease Default under this 2023 Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. Payment of Base Rentals or Additional Rentals by the City shall not constitute a waiver of any breach or default by the Corporation hereunder.

**Section 14.6 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** To the extent permitted by law, in the case of an Event of Nonappropriation or an Event of Lease Default neither the Corporation nor the City nor any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of the 2023 Indenture; and the Corporation and the City, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that

it may lawfully do so, the benefit of all such laws. Notwithstanding the foregoing, it is expressly understood that the City cannot and does not hereby waive its right to set up, claim or seek to take advantage of its police powers or its State constitutional or statutory right of eminent domain.

**Section 14.7 Default Remedies Related to Exhibit F.** Notwithstanding the foregoing provisions of this Article 14, the Corporation may be in default, and the City shall have the remedies all as provided in Exhibit F hereto. No remedy conferred upon or reserved to the City thereunder is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given thereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time-to-time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved in this 2023 Lease, it shall not be necessary to give any notice, other than such notice as may be required in this 2023 Lease.

## **ARTICLE 15 MISCELLANEOUS**

**Section 15.1 Sovereign Powers of City.** Nothing in this 2023 Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers or immunities of the City. Nothing in this 2023 Lease shall be construed to require the City to occupy and operate the Leased Property other than as tenant or lessee, or to require the City to exercise its right to purchase the Leased Property as provided in Article 12 hereof.

**Section 15.2 Notices.** All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered by facsimile or other electronic means or mailed by first class mail, postage prepaid, addressed as follows:

if to the City,

Mayor  
City and County of Denver, Colorado  
1437 Bannock  
Denver, CO 80202

with copies to:

Manager of the Department of Transportation and Infrastructure  
City and County of Denver, Colorado  
201 West Colfax, Department 608  
Denver, CO 80202

and

Manager of the Department of General Services  
City and County of Denver, Colorado  
201 West Colfax, Department 1110  
Denver, CO 80202

and  
Manager of Finance  
City and County of Denver, Colorado  
201 West Colfax, Department 1010  
Denver, CO 80202  
(and electronically to [debtmanagement@denvergov.org](mailto:debtmanagement@denvergov.org) )

and  
Director of Real Estate  
201 West Colfax, Department 1010  
Denver, CO 80202

and  
City Attorney  
City and County of Denver, Colorado  
201 West Colfax, Department 1207  
Denver, CO 80202

if to the Corporation,

Civic Center Office Building Inc.  
c/o Zions Bancorporation, National Association, Trustee  
1001 Seventeenth Street, Suite 850  
Denver, CO 80202  
Attention: Corporate Trust Department

(and electronically to [DenverCorporateTrust@zionsbancorp.com](mailto:DenverCorporateTrust@zionsbancorp.com))

if to the 2023 Trustee,

Zions Bancorporation, National Association  
1001 Seventeenth Street, Suite 850  
Denver, Colorado 80202  
Attention: Corporate Trust Department

(and electronically to [Stephanie.Nicholls@zionsbancorp.com](mailto:Stephanie.Nicholls@zionsbancorp.com) with a copy to [DenverCorporateTrust@zionsbancorp.com](mailto:DenverCorporateTrust@zionsbancorp.com))

The City, the 2023 Trustee and the Corporation may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 15.3 No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this 2023 Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the City, as tenant or lessee, and the Corporation, as landlord or lessor, the 2023 Trustee, as Corporation's assignee, and their respective successors and assigns, and nothing contained in this 2023 Lease shall give or allow any such claim or right of action by any other or third person on this 2023 Lease. It is the express intention of the City and

the Corporation that any person other than the City, the Corporation or the 2023 Trustee receiving services or benefits under this 2023 Lease shall be deemed to be an incidental beneficiary only.

**Section 15.4 No Discrimination in Employment.** In connection with the performance of work under this 2023 Lease, the Corporation shall not refuse to hire, nor discharge, promote or 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, and shall insert the foregoing provisions in all contracts and subcontracts entered into with respect to this 2023 Lease.

**Section 15.5 Binding Effect.** This 2023 Lease shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns, subject, however, to the limitations contained in Article 13 of this 2023 Lease; provided however, this 2023 Lease is subject to the approval of the City Council in accordance with the provisions of the City's Charter, and this 2023 Lease shall not take effect until its final approval by City Council, and until executed by City officials, including the Mayor and the Clerk.

**Section 15.6 Amendments.** This 2023 Lease may only be amended, changed, modified or altered as provided in the 2023 Indenture.

**Section 15.7 Net Lease.** This 2023 Lease shall be deemed and construed to be an "absolute net lease" and, subject to the prior appropriation requirements hereof, the City shall pay absolutely net during the Lease Term, the Base Rentals, the Additional Rentals and all expenses of, or other payments in respect of, the Leased Property as required to be paid by the City under this 2023 Lease, for which a specific Appropriation has been effected by the City for such purpose, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this 2023 Lease).

**Section 15.8 Computation of Time.** In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

**Section 15.9 Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this 2023 Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this 2023 Lease.

**Section 15.10 Severability.** In the event that any provision of this 2023 Lease, other than the requirement of the City to pay Base Rentals for which a specific Appropriation has been effected by the City for such purpose and the requirement of the Corporation to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the

conditions set forth in Article 12 of this 2023 Lease, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Execution in Counterparts. This 2023 Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 15.11 Execution in Counterparts.** This 2023 Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 15.12 Applicable Law.** This 2023 Lease shall be governed by and construed in accordance with the laws of the State.

**Section 15.13 Governmental Immunity.** Notwithstanding any other provision of this 2023 Lease to the contrary, no term or condition of this 2023 Lease shall be construed or interpreted as a waiver, express or implied, of any immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees, is controlled and limited by the provisions of such act and other applicable law, including, but not limited to, the risk management statutes codified at article 30 of title 24, CRS.

**Section 15.14 No Indemnification by City.** The City cannot and does not agree to indemnify, hold harmless or exonerate the Corporation, the 2023 Trustee or any other person for any purpose whatsoever.

**Section 15.15 Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this 2023 Lease.

**Section 15.16 Electronic Signatures and Electronic Records.** The City and the Trust consent to the use of electronic signatures hereunder. This 2023 Lease and any other documents requiring a signature hereunder, may be signed electronically by the City and the Trust in the manner specified by the City. The City and the Trust agree not to deny the legal effect or enforceability of this 2023 Lease solely because it is in electronic form or because an electronic record was used in its formation. The City and the Trust agree not to object to the admissibility of this 2023 Lease 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 grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**Section 15.17 Amendment and Restatement of 2008A Lease.** This 2023 Lease shall amend, restate, replace and supersede in its entirety the 2008A Lease. This 2023 Lease shall set forth the entire understanding and agreement regarding the terms and conditions upon which the Corporation has acquired the Site and Annex I from the City, has caused and is causing the design, construction and equipping of the Original Project and Improvements Project and has leased and is leasing the Leased Property to the City and upon which the City has, in turn, conveyed the Site and Annex I to the Corporation and has leased and is leasing the Leased Property from the

Corporation. All prior negotiations, discussions, offers and agreements between the Corporation and the City regarding the foregoing are hereby merged and incorporated in this 2023 Lease.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this 2023 Lease as of the day and year first above written.

**CIVIC CENTER OFFICE BUILDING INC.,**  
as Landlord or Lessor  
By **DENVER PUBLIC FACILITIES TRUST**  
**2023**  
By its Trustee  
**ZIONS BANCORPORATION, NATIONAL**  
**ASSOCIATION**

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Zions Bank Division  
By: Stephanie Nicholls  
Its: Vice President

ATTEST:

**CITY AND COUNTY OF DENVER,**  
**COLORADO**, as Tenant or Lessee

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Paul D. Lopez,  
Clerk and Recorder, *Ex-Officio*  
Clerk of the City and County of Denver

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Mayor

REGISTERED AND COUNTERSIGNED:

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—  
Timothy M. O'Brien, Auditor

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—  
Manager of Finance, *ex officio* Treasurer, and Chief  
Financial Officer

APPROVED AS TO FORM:

Kerry Tipper, Attorney for the

[Signature Page to 2023 Lease]



City and County of Denver

By: \_\_\_\_\_  
City Attorney

\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Stephanie Nicholls, as Authorized Representative of Zions Bancorporation, National Association, as Trustee for Denver Public Facilities Trust 2023, on behalf of Civic Center Office Building Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires: \_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF LEASED PROPERTY: SITE, BUILDING AND EQUIPMENT**

#### Description of Site:

LOTS 1-32, AND ALL OF THE VACATED ALLEY INTERJACENT THERETO, BLOCK 232, EAST DENVER, AND OUTLOT 3, EVANS ADDITION TO THE CITY OF DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO

(Street Address: 201 West Colfax, Denver, Colorado 80202)

Description of Building: The office building and improvements, including fixtures, acquired, constructed, rehabilitated and installed on the Site in accordance with the provisions of Article 7 (ACQUISITION, REHABILITATION, CONSTRUCTION, INSTALLATION OF THE PROJECT; OCCUPANCY AND MAINTENANCE OF THE PROJECT) and Exhibit F (BUILD TO SUIT PROVISIONS) of the 2000B Lease, as amended and restated by the 2003C Lease, as amended and restated in this 2023 Lease, such building originally referred to as the Civic Center Office Building and now officially named the Wellington E. Webb Municipal Office Building.

Description of the Equipment: All equipment, furniture, machinery and related property acquired or installed as a component of the Project and purchased pursuant to the provisions of the 2000B Lease, as amended and restated by the 2003C Lease, as may be updated and replaced pursuant to the Improvements Project, as amended and restated in this 2023 Lease.

The finishes in the Original Project are generally 20 years old and are in need of updated investment, including furniture, carpet, paint and collaborative office space configurations. Accordingly, the City has determined that the Original Project requires significant renovation and rehabilitation in order to facilitate the consolidation of office space for employees currently working from different locations into an efficient and collaborative setting through enhanced utilization of space (the “Improvements Project”). The Improvements Project will upgrade dated and worn-out office finishes to meet current office building standards, codes and ADA requirements.

It is anticipated the Improvements Project will upgrade the Original Project in a way that promotes physical well-being for the City’s employees through a positive and healthy work environment. In addition to carpet, paint, and finishes, highlights include, accessibility improvements, construction of added wellness rooms (mother’s room/health room), much-needed technology upgrades, space configurations for collaboration and efficiency, increased cubicle space for added employees and growth in a hybrid environment, replacement of discontinued and outdated furniture systems. Where possible, high efficiency appliances will be installed in break rooms and high efficiency lavatory faucets, as well as other flush/flow fixtures, installed as fixtures are being replaced.

There are no exterior improvements anticipated in the scope of this project.

The interior renovation scope may include, but is not limited to, staff open and private offices, conference rooms, break areas, secure storage areas, public interface spaces, and other support functions. The project will require a phased and partial renovation including partial demolition, new interior construction, updated finishes, data and technology upgrades, limited mechanical upgrades as needed, limited electrical and plumbing (“MEP”) systems as impacted, and security. Multiple utilities are shared between occupied floors within the Webb Building and phased and occupied construction will need to be analyzed to minimize disruption of services to continuously occupied portions of the building. The existing fire alarm system will need to be protected and kept functional per code requirements.

The public facing spaces within the Webb Building will need to be kept accessible during all phases of construction as well as some upper floors of the building that will not be renovated within this scope (including City Attorney’s Office (“CAO”) and other departments to be determined). This project is on a dense urban site requiring considerations for site logistics, access, and coordination with multiple City agencies.

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

1. RESERVATIONS CONTAINED IN VACATION ORDINANCE NO. 248 SERIES OF 1961 RECORDED SEPTEMBER 25, 1961 IN BOOK 8738 AT PAGE 604.
2. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE DOWNTOWN DENVER BUSINESS IMPROVEMENT DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED SEPTEMBER 05, 1992, UNDER RECEPTION NO. 89656.
3. ORDINANCE NO. 904, SERIES 2000, RELINQUISHING EASEMENTS LYING BETWEEN 14TH STREET, 15TH STREET, CLEVELAND PLACE AND COURT PLACE, AS RESERVED BY ALLEY VACATING ORDINANCE NO. 248, SERIES 1961.

## EXHIBIT C

### FORM OF REQUISITION

#### WELLINGTON E. WEBB MUNICIPAL OFFICE BUILDING IMPROVEMENTS PROJECT

To: Zions Bancorporation, National Association, as Trustee  
1001 - 17th Street Suite #850  
Denver, Colorado 80202  
Attention: Corporate Trust Department  
(and electronically to Stephanie.Nicholls@zionsbank.com)

The undersigned [Manager of the Department of Transportation and Infrastructure/ Manager of General Services] of the City and County of Denver, Colorado, as the lessee's representative under the Lease Purchase Agreement No. 2023 (Wellington E. Webb Municipal Office Building Project) dated \_\_\_\_\_, 2023 (the "2023 Lease"), between Civic Center Office Building Inc, as lessor, and the City and County of Denver, as lessee, hereby requisitions the following sum from the Project Fund established under the Third Amended and Restated Mortgage and Indenture of Trust dated \_\_\_\_\_, 2023 (the "2023 Indenture"), entered into by you, as Trustee, and in connection with such request, certifies as follows:

Requisition No. \_\_\_\_\_

Amount: \$ \_\_\_\_\_

The [Manager of Transportation and Infrastructure/ Manager of General Services] further certifies that:

- (a) all conditions required by the 2023 Lease and the 2023 Indenture to be met prior to the disbursement of the above amount have been satisfied;
- (b) the disbursement requested will be used for the "Costs of the Project" for the Improvements Project permitted under the 2023 Lease and the 2023 Indenture; and
- (c) the City is not in breach of any of the agreements contained in the 2023 Lease.

The City will provide a copy of each payee's Form W-9 or Form W-8, as applicable (unless previously provided). The City further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

**CITY AND COUNTY OF DENVER, COLORADO,**  
as Lessee

---

Its: [Manager of the Department of Transportation and Infrastructure] or [Manager of General Services] or designee  
and

---

Its Chief Financial Officer and Manager of Finance ex  
Officio Treasurer or designee

Attach:

Application for Payment which includes: (1) a schedule of values; (2) a cash flow and detailed report of anticipated future expenditures for the next subsequent three-month calendar period and for the total Costs of the Project through the Completion Date, reflecting projected expenditures compared to the total budget for the Project; and (3) a detailed report of the expenditures made in the past on the Costs of the Project, showing past expenditures compared to the total budget for the Project.

**EXHIBIT D**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**WELLINGTON E. WEBB MUNICIPAL OFFICE  
BUILDING IMPROVEMENTS PROJECT**

To: Zions Bancorporation, National Association dba, as Trustee  
1001 - 17th Street Suite #850  
Denver, Colorado 80202  
Attention: Corporate Trust Department  
(and electronically to Stephanie.Nicholls@zionsbank.com)

The undersigned hereby states and certifies:

1. That I am the Manager of the Department of Transportation and Infrastructure of the City and County of Denver, Colorado, acting as the lessee's representative under the Lease Purchase Agreement No. 2023 (Wellington E. Webb Municipal Office Building Project) dated \_\_\_\_\_, 2023 (the "2023 Lease"), between Civic Center Office Building Inc., as lessor, and the City and County of Denver, as Lessee. I am familiar with the facts herein certified and am authorized and qualified to certify the same.

2. The Improvements Project described in the 2023 Lease are substantially complete, meaning that the City has received a Temporary Certificate of Occupancy for the Project and all Costs of the Project as described in the 2023 Lease have been paid except for the following amounts to be set aside by the Trustee to pay remaining Costs of the Improvements Project: \$\_\_\_\_\_. This Certificate shall constitute the Certificate of Substantial Completion of Project for the purposes of the 2018A Lease and the definition of "Certificate of Substantial Completion of Project" therein.

3. Notwithstanding the foregoing, this Certificate shall not prejudice any rights against third parties which exist at the date hereof or which may subsequently come into being.

CITY AND COUNTY OF DENVER, COLORADO,  
as Lessee

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



## EXHIBIT E

### BASE RENTALS SCHEDULE

<b>Year</b>	<b>Cumulative Base Rentals Principal Portion</b>	<b>Cumulative Base Rentals Interest Portion</b>	<b>Cumulative Total Base Rentals</b>
2023	[\$12,460,000	\$37,297,567	\$49,757,567
2024	13,225,000	39,039,700	52,264,700
2025	14,035,000	36,130,200	50,165,200
2026	14,900,000	33,042,500	47,942,500
2027	15,550,000	29,764,500	45,314,500
2028	16,250,000	26,343,500	42,593,500
2029	17,170,000	22,768,500	39,938,500
2030	17,755,000	18,991,100	36,746,100
2031	38,000,000	15,085,000	53,085,000
2032	8,450,000	6,725,000	15,175,000
2033	8,875,000	6,302,500	15,177,500
2034	9,315,000	5,858,750	15,173,750
2035	9,780,000	5,393,000	15,173,000
2036	10,270,000	4,904,000	15,174,000
2037	10,785,000	4,390,500	15,175,500
2038	11,325,000	3,851,250	15,176,250
2039	11,890,000	3,285,000	15,175,000
2040	12,485,000	2,690,500	15,175,500
2041	13,110,000	2,066,250	15,176,250
2042	13,765,000	1,410,750	15,175,750
2043	14,450,000	722,500	15,172,500
Total	\$293,845,000	\$306,062,567	\$599,907,567]

### STATEMENT REGARDING THE LEASED PROPERTY

The duration of this 2023 Lease, throughout the Lease Term, does not exceed the weighted average useful life of the Leased Property and, to the extent that the Leased Property constitutes items of personal property, including equipment, such items are considered paid from the first Base Rentals described above.

For the purposes of providing the actual Base Rentals due under this Exhibit E of the 2023 Lease, the Chief Financial Officer may adjust the amounts of the Principal Portions and the Interest Portions of such Base Rentals within and between each Fiscal Year set forth above; provided that the Total Aggregate Principal Portion and the total Interest Portion of Base Rentals due under this Exhibit E of the 2023 Lease shall not exceed \$599,907,567.

**EXHIBIT F**  
**SECTIONS 7.1 THROUGH 7.13 OF 2023 LEASE AND**  
**BUILD TO SUIT PROVISIONS**

**With respect to the Original Project, the following is a Table of Contents for Sections 7.1 through 7.13 of this 2023 Lease.**

**ARTICLE 7**  
**ACQUISITION, REHABILITATION, CONSTRUCTION,**  
**INSTALLATION OF THE PROJECT; OCCUPANCY AND**  
**MAINTENANCE OF THE PROJECT**

Section 7.1	Agreement to Acquire, Rehabilitate, Construct, Improve and Install or Maintain .....	F-1
Section 7.2	Disbursements for Costs of the Project.....	F-2
Section 7.3	Completion of Rehabilitation, Acquisition, Construction, and Installation.....	F-4
Section 7.4	Title Insurance .....	F-5
Section 7.5	Project Contracts .....	F-5
Section 7.6	Project Documents .....	F-6
Section 7.7	Defaults Under Project Contracts .....	F-6
Section 7.8	Performance and Payment Bonds .....	F-6
Section 7.9	Commercial General Liability Insurance; Business Automobile Liability Insurance; Pollution/Environmental Impairment Insurance .....	F-7
Section 7.10	Builder's Risk Insurance; Professional Liability Insurance for Design.....	F-8
Section 7.11	Worker's Compensation Insurance.....	F-8
Section 7.12	Umbrella Liability Insurance; Waiver of Subrogation; Insurance Certificates; Insurers' Ratings; Proceeds of Certain Insurance Policies and Performance Bonds .....	F-9
Section 7.13	Corporation's OCIP Insurance.....	F-10

**Sections 7.1 through 7.13.**

This 2023 Lease is an amendment and restatement of the 2008A Lease, which in turn was an amendment and restatement of the 2003C Lease, which, in turn, was an amendment and restatement of the 2000B Lease, and this 2023 Lease replaces and supersedes in its entirety the 2008A Lease, which in turn, replaced and superseded in its entirety the 2003C Lease, which, in turn, replaced and superseded in its entirety the 2000B Lease. For purposes of this 2023 Lease and because the Certificate of Final Completion with respect to the Original Project has been delivered, Sections 7.1 through 7.13 of the 2003C Lease are restated by this 2023 Lease in this Exhibit F. Notwithstanding this restatement in Exhibit F, Sections 7.1 through 7.13 of the 2008A Lease, the 2003C Lease and the 2000B Lease survive the execution and delivery of this 2023 Lease and remain in full force and effect as follows:

**Section 7.1 Agreement to Acquire, Rehabilitate, Construct, Improve and Install or Maintain.** The Corporation has acquired the Site and Annex I in accordance with the provisions of Exhibit H of the Initial Lease and shall take all other actions and do all things necessary for the rehabilitation and construction of the Project consistent with the Build To Suit Provisions of this Lease as set forth in Exhibit F and, in connection therewith, will comply with all applicable provisions of federal and State law, the City's Charter and the DRMC. Subject to Section 8.1 hereof, title to the Project shall be held by the Corporation, subject to this Lease and the Indenture. The City shall maintain the Project after a Certificate of Final Completion is filed with the Trustee. The Build To Suit Provisions may be amended or changed from time-to-time by the written agreement of the Corporation and Manager of the Department of Transportation and Infrastructure of the City and such amendment or change shall not require any further amendment of this Lease.

So long as this Lease is in full force and effect and no Event of Nonappropriation or Event of Lease Default shall have occurred, the Corporation and the City shall have full power to carry out the acts and agreements provided in this Section 7.1, and such power shall not be terminated or restricted by act of the Corporation, the Trustee or the City, except as provided in this Section 7.1.

The Corporation has acquired the Site and Annex I and agrees to rehabilitate, construct, make or install or cause to be rehabilitated, constructed, made or installed the Project as described in Exhibit A hereto through the application of moneys to be disbursed by the Trustee pursuant to the Indenture. If for any reason the Project is not rehabilitated, constructed, made or installed by the date provided in the Build To Suit Provisions, there shall be no resulting liability on the part of the City or the Corporation (except as otherwise provided in the Build To Suit Provisions) or an Event of Lease Default hereunder, and there shall be no diminution in or postponement of the Base Rentals and Additional Rentals required to be paid by the City and for which an Appropriation has been effected by the City during the Lease Term. However, in the event that the Trustee shall not receive a Certificate of Final Completion that the Project has been rehabilitated, constructed, made or installed, as required in Section 7.3 of this Lease, on or before three years after July 27, 2000, the Trustee, shall, on behalf of the Corporation as the owner of the Project, upon 30 days written notice to the Corporation and the City, be authorized, but not required, to rehabilitate, construct, make or install the remainder of the Project from any moneys remaining for the Project.

**Section 7.2 Disbursements for Costs of the Project.** The Indenture provides that the Trustee shall, at the direction of the Corporation, disburse the moneys held by the Trustee in the Project Fund created for this purpose under the Indenture to pay the Costs of the Project. Such disbursements shall be made by the Trustee upon receipt by the Trustee of a requisition, in substantially the form attached hereto as Exhibit C, signed by the Corporation's Representative (as defined in Exhibit F (Build To Suit Provisions)) and acknowledged by the City which shall contain, if applicable, the following:

- (a) with respect to each payment to be made, a statement of:
  - (i) the requisition number,
  - (ii) the name and address of the person, firm or corporation to whom payment is due,

- (iii) the amount to be paid,
  - (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Project and has not been the basis of any previous withdrawal,
  - (v) that all conditions required by this Lease to be met prior to such payment have been satisfied, and
  - (vi) that the disbursement requested will be used for a Cost of the Project;
- (b) reasonable detail of the nature of the obligation and, in the case of a disbursement for items of Equipment, the serial number of all such items;
- (c) a statement of the Project Fund amounts which would have been paid to the State of Colorado for sales and use taxes on taxable Project materials and property included within the requisition, had an exemption from such State sales and use taxes not been obtained from the State, as provided in Section 2.05, "State Sales and Use Taxes" of Exhibit F to this Agreement;
- (d) a certification by the Corporation that it has received and will hold in its records:
- (i) a bill, invoice or statement of account for such obligation;
  - (ii) in the case of a disbursement for items of Equipment, a valid bill of sale, receipt or other evidence of title in the name of the Corporation containing warranties of title free and clear of all claims together with a financing statement in form appropriate to perfect the security interest of the Trustee in such items;
  - (iii) releases and lien waivers for all services or materials with respect to the Project included in amounts requested by previous disbursement requests except as to any retainage;
- (e) financing statements in form appropriate to perfect the security interest of the Trustee in items of Equipment which are the subject of such requisition (to be filed and held by the Trustee); and
- (f) a statement of the Corporation's Representative's reasonable expectation that the Costs of the Project will not exceed the amount remaining in the Project Fund created under the Indenture for the purpose of paying the Cost of the Project.

The Manager of the Department of Transportation and Infrastructure of the City and the Corporation shall execute such financing statements and other instruments and permit the labeling of the Equipment in connection with each disbursement as may be reasonably required by the Trustee to perfect its security interest in such Equipment.

At least 15 days prior to the beginning of the construction or installation of any future additions or improvements to the Project by the City, as tenant or lessee, the City shall notify the Corporation and the Trustee thereof and on behalf of the Corporation shall give notice to all contractors, subcontractors and material suppliers as required by Section 38-22-105, CRS that the

Corporation's and Trustee's interests in the Project is not subject to any liens. Prior to the start of any construction or installation of any future additions or improvements to the Project by the City, as tenant or lessee, and throughout said period of construction and installation, the City will also, for the benefit of the Corporation and the City, post the notice required by Section 38- 22-105, CRS that the Corporation's and the Trustee's interests in the Project are not subject to any liens in a conspicuous place on the Project. Notwithstanding the foregoing and subject to the provisions of Section 8.2 hereof, if a lien is established against the Project, the City shall not permit such mechanic's or other lien to remain against the Project for labor or materials furnished to or requested by it in connection with such future additions or improvement to the Project; provided that if any such lien is established, the City shall either discharge the lien or, in good faith, contest and diligently pursue to conclusion any lien filed or established against the Project and in such event the City may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Corporation and the Trustee shall cooperate with the City in the discharge or contest process.

If an Event of Nonappropriation or an Event of Lease Default shall occur prior to the Final Completion of the Project, any moneys held in funds and accounts created under the Indenture may be utilized by the Trustee on behalf of the Corporation as the owner of the Project, to complete, repair or modify the Project, or may be disbursed for the payment of Certificates of Participation or other charges as the Trustee may be directed under the Indenture.

Under the Indenture, the Corporation will authorize and direct the Trustee to issue its checks or drafts for each disbursement to pay Costs of the Project provided for herein and the City will consent to such disbursements by the Trustee. The Indenture provides that (a) the Trustee shall keep and maintain adequate records pertaining to the accounts in the Project Fund established under the Indenture, (b) the Trustee shall make all disbursements from the Project Fund as reasonably directed by the Corporation's Representative, and (c) after the Project has been rehabilitated, constructed, made or installed and the Certificate of Final Completion has been filed with the Trustee as provided in Section 7.3 of this Lease, and after the Corporation's directions under Section 7.3 hereon with respect to any remaining amounts on deposit with the Trustee are satisfied, the Trustee shall file an accounting thereof with the Corporation and the City.

**Section 7.3 Completion of Rehabilitation, Acquisition, Construction, and Installation.** Upon the Final Completion of the Project and the acceptance thereof by the Corporation, the Corporation, with written acknowledgment of the City, shall deliver to the Trustee a Certificate of Final Completion.

In the event that, after the delivery of the Certificate of Final Completion, there remains in the Project Fund to be created under the Indenture any unreserved balance, such balance shall be used by the Trustee, as directed by the City to:

- (a) add to, modify or alter the Project or add new components thereto, or
- (b) direct the Trustee to transfer the balance to the Base Rentals Fund to be created under the Indenture for a credit against the Base Rentals as the same shall become due with a corresponding adjustment in the amount of Base Rentals payable under Exhibit E (Base Rentals Schedule) to this Lease or

- (c) effect a combination of the foregoing.

Base Rentals to be set forth in Exhibit E (Base Rentals Schedule) to this Lease shall be recalculated by the Trustee in the event of any partial prepayment of Base Rentals.

**Section 7.4 Title Insurance.** On the date this Lease is executed and delivered, the Corporation shall provide a standard mortgagee's title insurance policy issued to the Trustee in an amount equal to no less than the original Lease Balance, insuring the Trustee's first mortgage interest in the Project subject only to Permitted Encumbrances.

**Section 7.5 Project Contracts.** Subject to Exhibit F (Build To Suit Provisions), in the event of cost overruns resulting in the Cost of the Project exceeding the amounts available in the Project Fund created under the Indenture, all in connection with the acquisition of the Site and Annex I or rehabilitation, construction, making or installation of the Project, upon written consent of the City, (a) the Corporation shall make such modifications to the plans and specifications for the Project, as will permit such Project to be rehabilitated, constructed, otherwise acquired, improved and installed from the amounts available therefor under the Indenture or (b) the Corporation may deposit additional funds from the proceeds of additional Certificates of Participation in the Project Fund created under the Indenture sufficient to complete the Project. If within a reasonable time after which the City has received a request for such consent the City has not so consented, the Corporation shall proceed under (a) above.

Upon the occurrence of an Event of Nonappropriation or an Event of Lease Default, the Trustee may, on behalf of the Corporation as owner of the Project, complete the acquisition of the Site and Annex I and the rehabilitation and construction of the Project, utilizing any moneys available therefor. All Project Contracts shall provide that, upon a termination of the Lease Term by reason of the occurrence of an Event of Nonappropriation or an Event of Lease Default or upon the Trustee's assuming control over completion of the Project as provided in Section 7.1 of this Lease, and upon written notice by the Trustee to the party or parties to the Project Contracts that any of such events has occurred: (a) such contracts shall be fully and freely assignable to the Trustee without the consent of any other person and the Trustee may choose to assume or not assume such contracts; and (b) if the Trustee does so assume such contracts, the other party or parties thereto shall perform the agreements contained therein for the Trustee. All Project Contracts shall also provide that, upon an Event of Nonappropriation or an Event of Lease Default and upon written notice from the Trustee, the Trustee may, in its full discretion, terminate some or all of such Project Contracts; and the other party or parties thereto shall then be entitled to payment only from amounts available therefor under the Indenture and only for work done prior to such termination. Except for its Reserved Rights, the Corporation shall assign all of its right, title, and interest in and to any or all Project Contracts to the Trustee and shall deliver all Project Documents held by it to the Trustee.

All Project Contracts shall also contain the following: (a) the contracting party shall agree to pay or cause workers performing work on the Project to be paid prevailing wages as established by the City pursuant to DRMC §§20-76, that it shall comply with all of the procedures set forth in said ordinance and that it will require its subcontractors to meet the requirements of this provision; upon written notice to the Corporation and the Trustee from the City, the Corporation shall withhold progress payments if the prevailing wages are not paid to workers performing work on

the Project until failure to pay prevailing wages is remedied; (b) the parties shall agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, age, national origin, gender, military status, sexual orientation, marital status, or physical or mental disability; (c) the parties shall agree that the Corporation shall apply the provisions of DRMC §§20-85 through 20-89 regarding the application of an art program to the Project; and (d) the parties shall further expressly agree to insert the foregoing provisions in all contracts and subcontracts entered into with respect to the Project. In respect to the art program the Corporation agrees it shall procure works of art selected by the Mayor's Office of Art, Culture and Film for installation in the Project. In addition, it is the policy of the City to prohibit discrimination in the awarding of contracts and subcontracts. It is the intention of the Corporation, if it is legally permissible, to carry out this policy.

All Project Contracts entered into by the Corporation shall contain a provision stating that the contractor understands and acknowledges that (a) the relationship of the City and the Corporation under the Lease is that of tenant or lessee and landlord or lessor and not a relationship of partnership, joint venture nor principal agent and (b) the City has not undertaken nor has it assumed any responsibility or duty to the Corporation or any third party (such as the contractor) with respect to the Corporation's obligations relating to the Project.

**Section 7.6 Project Documents.** The Corporation or the City, as the case may be, shall furnish to the Trustee, on or before the date on which this Lease is executed and delivered, copies of the Project Documents relating to those Project Contracts to which it is a party and from time-to-time thereafter as soon as such Project Documents shall become available to the Corporation or the City. Neither the Project Documents nor any change or amendment thereto shall (a) cause the Project to be used for any purpose prohibited hereby or by the Constitution or laws of the State or the Charter; (b) result in a material reduction in the value of the Project (except as provided in Section 7.5 hereof); or (c) adversely affect the ability of the City to meet its obligations hereunder.

**Section 7.7 Defaults Under Project Contracts.** In the event of any material default by a contractor under any of the Project Contracts, or in the event of a material breach of warranty with respect to any materials, workmanship, or performance, the Corporation or the City, as the case may be, shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of such Project Contracts. The Net Proceeds of any amounts recovered by way of damages, liquidated damages, refunds, adjustments, or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorneys' fees and costs) shall be paid to the Trustee, as the Corporation's assignee, for deposit to the Base Rentals Fund created under the Indenture.

**Section 7.8 Performance and Payment Bonds.** The contractor under any Project Contract for construction, including the Improvements Project Design Build Contract, shall be required to furnish a performance and labor and material payment bond on forms acceptable to the Corporation, copies of which shall be provided to the Trustee. Such bonds shall be made payable to the Corporation and the Trustee, as their interests may appear, and shall be executed by a corporate surety listed in the July 1, 1999 edition of the Federal Register and each succeeding year as approved to write bonds for governmental entities, licensed to transact business in the State, acceptable to the Trustee and shall be in an amount at least equal to the contract price for such

Project Contract, as the case may be, provided the bond amount does not exceed said surety's authorized capacity. If, at any time during the construction of the Project, the surety on such bond shall be disqualified from doing business within the State, an alternate surety meeting the requirements set forth above and acceptable to the Corporation shall be selected. In the event of any change order resulting in the performance of additional work in connection with the Project, the amounts of such bonds shall be increased by an amount at least equal to the cost of such additional work or materials or fixtures to be incorporated in the Project.

**Section 7.9 Commercial General Liability Insurance; Business Automobile Liability Insurance; Pollution/Environmental Impairment Insurance..** Each contractor entering into a Project Contract, including the Improvements Project Design Build Contract, shall be required to procure and maintain at all times during the term of the Project Contract a business automobile liability and a commercial general liability insurance policy, as well as the other types of insurance provided below, in a form and by a company acceptable to and approved by the Corporation and acceptable to the City covering all operations hereunder, including the following minimum amounts:

(a) **Business Automobile Liability and Property Damage Insurance** in an amount of \$1,000,000 Combined Single Limit with coverage at least as broad as Insurance Services Office form CA0001 (12/93), and covering all on- and off-site automobile operations associated with the Project Contract. If any vehicle is used to transport hazardous cargo, CA9948 or its equivalent, Broadened Coverage Endorsement must be maintained; and

(b) **Commercial General Liability Insurance** in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, exclusive to the Project as per ISO form CG2503 or its equivalent as noted by reference on the Certificate of Insurance with coverage at least as broad as Insurance Services Office standard form CG0001 (1/96).

Commercial general liability coverage shall include the Corporation, the City and the Trustee as additional insureds with coverage at least as broad as Insurance Services Office form CG2026, with primary coverage as respects the Corporation and the City.

(c) **Contractors Pollution/Environmental Impairment Insurance:** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract to procure and maintain, at its own cost and expense, during the term of the Project Contract, Contractors Pollution/Environmental Impairment insurance. Such insurance shall include the Corporation and the Trustee as additional insureds and must remain in force for the time period for the bringing of actions described in CRS Section 13-80-104. This policy shall be in a form and provided by a company acceptable to and approved both by the Corporation and the City. The following minimum liability limit amounts and requirements shall apply.

Liability Limits of \$10,000,000 per claim and aggregate shall be provided with a deductible of no more than \$50,000 per claim which will be the responsibility of the Project Contractor.

Section 9.4 of this Lease sets forth the obligations of the City to maintain certain insurance in respect of the Project in the amounts and under the circumstances described therein.



## **Section 7.10 Builder's Risk Insurance; Professional Liability Insurance for Design.**

(a) **Builder's Risk Insurance:** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract to procure and maintain, at its own cost and expense, during the term of the applicable Project Contract and until the Project is accepted and insured by the City, Builder's Risk, Marine Form, Agreed Value, Testing exclusion deleted, Flood and Surface Water exclusion deleted, Difference In Condition coverage, completed value insurance upon the Project to be improved, in whole or in part, by such contractor. The policy may have a deductible clause in an amount not to exceed \$50,000 per claim. A certified copy of such insurance policy with appropriate endorsements attached shall be provided by the Corporation to the City and a certificate with respect thereto shall be provided by the City to the Trustee prior to commencement of construction of the Project. Such insurance coverage shall be in an amount at least equal to the total contract price for such contractor's work. In the event of any change order resulting in the performance of additional work, the amount of such insurance shall be increased to include the cost of such additional work, as well as related materials and fixtures. Such builder's risk completed value insurance policy shall list as a named insured the contractor under any Project Contract all subcontractors, the Corporation, the Trustee, and the City, as their respective interests may appear. No agent or employee of the Corporation or the City shall have the power to adjust or settle any loss with respect to the Project without the prior written consent of the Trustee; except that losses not exceeding \$5,000 may be adjusted or settled by the Corporation without the Trustee's consent. The consent of the City shall not be required for any such adjustment or settlement, regardless of the amount of the loss.

(b) **Professional Liability Insurance:** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract for design, engineering and construction supervision to provide Professional Liability insurance for the design, engineering, construction supervision, and any and all other professional services of the Project, including coverage for any environmental work within the related contracts, in an amount not less than \$10,000,000 per claim and aggregate with a deductible amount not to exceed \$50,000 which will be the responsibility of the project contractor, and such Professional Liability insurance must remain in full force for the time period for the bringing of actions described in CRS Section 13-80-104. Professional liability coverage shall include the Corporation, the Trustee and the City, in its capacity as a tenant, as additional insureds.

Section 9.4 of this Lease sets forth the obligations of the City to maintain certain insurance in respect of the Project in the amounts and under the circumstances described therein.

**Section 7.11 Worker's Compensation Insurance.** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract to procure and maintain, at its own cost and expense, worker's compensation insurance as required in the State of Colorado during the term of its Project Contract, covering its employees working thereunder, which coverage shall comply with statutory limits and include \$1,000,000 Employer's Liability. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be canceled without at least 45 days prior written notice ten days prior written notice for nonpayment of premiums) to the City, the Corporation and the Trustee. A certificate issued by the worker's compensation carrier evidencing such coverage shall be provided by the Corporation to the Trustee with respect to such contractor. Each Project Contract shall also provide that each

subcontractor of any contractor who is a party to such Project Contract shall be required to furnish similar worker's compensation insurance.

**Section 7.12 Umbrella Liability Insurance; Waiver of Subrogation; Insurance Certificates; Insurers' Ratings; Proceeds of Certain Insurance Policies and Performance Bonds.** The City shall require the Improvements Project contractor(s) and vendors entering into a Project Contract to procure and maintain, at its own cost and expense, during the term of the Project Contract and until the facilities to be constructed under Exhibit F have been accepted by the City, Umbrella Liability insurance covering excess over all primary worker's compensation, commercial general liability and business automobile insurances as required hereinabove. This insurance shall be in a form and provided by a company acceptable to and approved both by the Corporation and the City. The Umbrella Liability Insurance shall provide liability limits in the amount of \$25,000,000 per occurrence and aggregate.

The City shall provide or cause all insurance coverages contained herein, with the exception of Professional Liability insurance, to provide for Waiver of Subrogation and Rights of Recovery against the City and County of Denver, its officers, officials and employees, as their interests may appear.

The minimum insurance requirements for each of the coverages required herein are set forth in the Certificate of Insurance attached hereto as Exhibit J. The Corporation agrees to comply, and to cause each contractor entering into a Project Contract to comply, with each condition, requirement or specification set forth in Exhibit I for each required coverage during all periods the required coverages are in effect.

The Corporation shall cause, or require that all contractors entering into a Project Contract shall cause, to be executed an original of the form certificate of insurance attached as Exhibit I, specifying on the certificate the issuing company or companies, policy numbers and policy periods, for each required coverage. An original of the form certificate shall be executed by an authorized party before a notary in accordance with the terms of the certificate. One original of the completed and fully executed certificate shall be submitted to the City's Risk Administrator prior to the execution of the Project Contract. The City's acceptance of any submitted certificate is subject to the approval of the City's Risk Administrator .

The Corporation shall furnish, or cause each contractor entering into a Project Contract to furnish, a separate certificate on the form certificate provided for each subcontractor or subconsultant. All coverages for subcontractors or subconsultants shall be subject to all of the requirements set forth herein and in the form certificate and the Corporation shall require that each subcontractor or subconsultant complies with all of the coverage requirements.

Each such policy and certificate shall contain valid provisions or endorsements stating "This policy will not be cancelled or materially changed or altered without first giving forty-five days prior written notice thereof (ten days for nonpayment of premium) to the Manager of the Department of Transportation and Infrastructure, City and County of Denver, City and County Building, Denver, Colorado 80202, sent by certified mail, return receipt requested" and "Any coverage afforded the City and County of Denver as additional insured shall apply as primary

insurance and any other insurance issued to the City and County of Denver shall apply as excess and non-contributing insurance”.

All private insurers providing insurance under this Lease shall be rated A-IX or better by A.M. Best.

The Net Proceeds of any performance or payment bond or insurance policy required by Sections 7.8 and 7.10 of this Lease, and any Net Proceeds received as a consequence of default under a Project Contract as provided by Section 7.7 of this Lease, shall be paid to and deposited with the Trustee as provided in the Indenture.

**Section 7.13 Corporation’s OCIP Insurance.** The Owner Controlled Insurance Program (“OCIP”) of the Corporation shall be deemed to satisfactorily meet the requirements of Sections 7.9, 7.10, 7.11 and 7.12 hereof to the extent that such insurance program provides the types of coverage and the minimum amounts of coverage to be provided as set forth in the said sections, provided that the City’s Risk Administrator shall approve in writing the OCIP.

The Corporation shall require and provide proof, if requested, that each contractor undertaking work on the Project and covered under the OCIP certifies by Certificates of Insurance provided by their insurance providers that they carry Worker’s Compensation/Employers Liability and Commercial General Liability for their activities off-site for the term of this Project.

(End of Sections 7.1 through 7.13 of the 2023 lease.)

Notwithstanding the amendment and restatement of the 2003C Lease, Exhibit F of the 2003C Lease (the Build To Suit Provisions) is hereinafter reproduced and restated as a portion of Exhibit F of the 2023 Lease and such Build To Suit Provisions survive the execution and delivery of the 2023 Lease and remain in full force and effect as follows:

## **BUILD TO SUIT PROVISIONS**

### **I. IMPROVEMENTS**

**Section 1.01 Definitions.** All capitalized terms not otherwise defined in this Exhibit shall be defined in Article XI of this Exhibit.

**Section 1.02 Real Property and Existing Improvements.** The City is the current owner of the Site and Annex I. Annex I, a four story municipal office building (“Annex I”) consisting of approximately 80,000 gross square feet of space currently exists on a portion of the Site. The remainder of the Site is surface parking.

**Section 1.03 Public Service Utilities.** The City and the Corporation acknowledge that the relocation of the Public Service Utilities is complete and that the Project Work may commence.

**Section 1.04 Design Build Contract.** The Corporation has entered into an Original Project Design Build Contract with the Original Project Design Builder, for construction of the Project Work consistent with the Technical Design Criteria and the Facility Program. The City has

furnished its final approval of the Original Project Design Build Contract as of June 22, 2000. The Corporation agrees that it will not amend the Original Project Design Build Contract without first having received prior written approval thereof from the City's Manager of the Department of Transportation and Infrastructure, except that Change Orders shall be governed by Section 6.01 below. The Original Project Design Build Contract is solely between the Corporation and the Original Project Design Builder, and the City shall have no right to direct the activities of the Original Project Design Builder. The City shall in no way be held responsible or liable for any faulty or defective performance thereof, nor for any representations made by either party to such contract. The City shall in no way be held responsible or liable for any nonperformance of the Original Project Design Build Contract. The Corporation shall not be liable to the City for any costs or delays associated with any default of City hereunder, and the Corporation shall have the right to extend the Substantial Completion Date if the completion of the Project Work is delayed as a result of the City's failure to timely comply with its responsibilities and covenants under this Exhibit.

**Section 1.05 Project Work.** The "Project Work," intended to be occupied and used by the City pursuant to the terms of this Lease and as such term is used in this Exhibit, shall consist of the (i) design, development and construction of a new Civic Center Office Building containing no less than 480,000 net square feet; (ii) design and renovation of Annex I containing approximately 64,000 net square feet (as defined in the Technical Design Criteria) on the Site; (iii) construction of improvements for on-site parking of approximately 630 vehicles; (iv) any infrastructure and off-site improvements as may be required relative thereto; and (v) the procurement and installation of furniture, fixtures and equipment (the "FF&E") pursuant to the terms and conditions of Section 3.06 of this Exhibit. The Project Work shall maintain the unique historical, urban design and architectural heritage exemplified by Annex I and existing surrounding improvements including MacIntosh Park and shall be consistent with the Technical Design Criteria, the Facility Program and Design Documents approved by the City.

**Section 1.06 Completion.** The Corporation agrees, subject to the terms hereof and matters outside the control of the Corporation, to cause Design Build Substantial Completion to occur consistent with the Technical Design Criteria, the Facility Program and the approved Design Documents on or before September 15, 2002, subject to delays and extensions as set forth herein. Furthermore, the City acknowledges that the Corporation is not a guarantor of the Project Work, but the guarantees and warranties provided to the Corporation by the Design Builder are for the use and benefit of the City as the tenant.

## **II. PAYMENT FOR PROJECT WORK**

**Section 2.01 Financing of Improvements.** The development, design, construction and procurement of the Project Work is to be financed by the Corporation with the proceeds of the Financing, which proceeds will be disbursed by the Trustee on behalf of the Corporation as set forth in the Indenture.

**Section 2.02 Limitations on City Liability.** It is understood and agreed by the parties that any payment or performance obligation of the City, whether direct or contingent, under this Lease or any amendment to this Lease shall extend only to funds appropriated by the City Council,

paid into the City Treasury and encumbered for purposes of this Exhibit. The Corporation and the City acknowledge that (i) the City does not hereby irrevocably pledge present cash reserves for payment or performance in future fiscal years, and (ii) this Exhibit is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the DRMC.

**Section 2.03 Limitations Concerning Engagement of Developer by Corporation.** The Corporation agrees that in connection with the development and construction of the Project Work, the Corporation will pay a fee (the “Developer’s Fee”) to the Developer in an amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) for all of the Developer’s Services related to the Project Work, except for the “FF&E Fee,” which is a separate fee payable by the Corporation to the Developer for procurement, installation and management of the installation of the FF&E as specified in Section 3.08 hereof. Five Hundred Thousand Dollars (\$500,000.00) (the “Initial Developer’s Fee”) of the Developer’s Fee has been paid in equal monthly installments of One Hundred Thousand Dollars (\$100,000.00) commencing as of February 1, 2000, and the balance shall be paid by the Trustee from the moneys deposited to the Project Fund under the Indenture, in equal monthly payments of \$66,000 each, beginning August 1, 2000, and continuing each month through the anticipated date of the issuance of a Certificate of Final Completion of the Project Work pursuant to Section 19.2.4 of the Design Build Contract. Any remaining balance of the Developer’s Fee shall be paid upon the actual date of the issuance of the Certificate of Final Completion. The Corporation agrees that it will require in its agreement with the Developer that all work performed by the Developer in connection with the Project shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work or services of a similar nature to the work or services to be performed under such agreement.

The Initial Developer’s Fee is not intended to include compensation by the Corporation to the Developer for reimbursement of the costs of consultants to be engaged by the Corporation or its Developer. The Corporation agrees that it will not enter into the Developer’s Services Agreement, or any amendments thereto, without first having received prior written approval of such agreement and any amendments thereto from the City’s Manager of the Department of Transportation and Infrastructure.

**Section 2.04 Reimbursement to the City of Certain Amounts.** The Corporation agrees to submit to the Trustee one or more requisitions for all costs paid by the City in respect of the Project to be reimbursed by the Trustee for such costs pursuant to the procedures set forth in the Lease and the Indenture, including the actual costs, if any, incurred by the City for the relocation of the Public Service Utilities.

**Section 2.05 State Sales and Use Taxes.** The parties acknowledge that the Design Build Contract provides for a guaranteed maximum price which was calculated to include sales and use taxes payable to the State of Colorado on taxable materials and property purchased and used for the Project. The Corporation agrees it will seek expeditiously from the State of Colorado an exemption from such State sales and use taxes.

If the Corporation obtains a sales tax exemption, then the Corporation agrees that upon requisitioning the Trustee for each payment to be made to the Design Builder, the Corporation will report on each such requisition the Project Fund amounts which otherwise would have been paid for State sales and use taxes on otherwise taxable Project materials and property included within the requisition. The Trustee then will deposit all such amounts from the Project Fund into the State Sales Tax Account of the Project Fund.

The Corporation further agrees that upon obtaining a sales tax exemption from the State, it will seek a refund from the State of all sales and use taxes which have been paid to the State on Project materials and property by the Design Builder and each of its subcontractors and suppliers at all tiers, and that all such refunds of State sales and use taxes will be deposited into the State Sales Tax Account of the Project Fund.

The Corporation agrees that in the procurement of FF&E and all other purchases of personal property under this Lease it will expeditiously seek to obtain an exemption from the payment of State sales taxes. The parties agree no State sales taxes will be included in the pricing of FF&E unless the Corporation is denied a State sales tax exemption.

### **III. CONSTRUCTION PLANS FOR IMPROVEMENTS**

**Section 3.01 Design of Improvements.** The Corporation shall require the Design Builder to furnish complete design services through the Designer, which design services shall include the development of schematic design drawings and specifications, design development documents and construction documents, and shall also include administration services during the construction of the Project Work. The Corporation agrees it shall require the Design Builder in providing its Design Services to comply with the lawful requirements of all federal, state and local authorities having lawful jurisdiction over the Project Work. The Corporation shall require that the Design Builder shall design the Project Work to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation and operation of the Project Work, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes. The Corporation agrees that the Design Build Contract will provide for the design of the Project Work in a manner consistent with the Technical Design Criteria and the Facility Program as such documents are amended and supplemented by the City from time-to-time with prior approval of the Corporation. Following final approval of the Design Development Documents by the City and the Corporation, nothing herein shall prohibit the City from requesting additional changes or modifications to either the Technical Design Criteria or the Facility Program, but all such requested changes or modifications shall be subject to Corporation's prior approval thereof, which approval shall not be unreasonably withheld or delayed. Furthermore, to the extent of any proposed changes to the Technical Design Criteria and to the Facility Program which are to be initiated by the Corporation, the City's prior approval shall be required therefor.

**Section 3.02 City Design Review.** The Corporation agrees that it will submit to the City, as prepared by the Designer and submitted to the Corporation by the Design Builder, whether in phases, partial submittals or in their entirety, the schematic design drawings, the design development documents and the final construction documents and all drawings and specifications

related thereto (collectively, the “Design Documents”), and any proposed changes related to the foregoing, for the City’s review and approval for consistency with and fulfillment of the requirements of the Technical Design Criteria, the Facility Program and Design Documents previously approved by the City. The City agrees its review of the Design Documents will be in accordance with the time limits specified in a plan Review Process (the “Review Process”) attached hereto as Attachment 1 to Exhibit F, which Review Process may be amended by the parties hereto without further amendment to this Lease and without the necessity of further approval by Denver’s City Council, provided that upon approval in writing by the City’s Manager of the Department of Transportation and Infrastructure and the Corporation of such amendments, the amended Attachment 1 is filed with Denver’s City Clerk and made part of the Lease. In the case of the submittal of Design Documents to the City pursuant to the Review Schedule, the failure of the City to object within the applicable time frame set forth in the Review Process shall be deemed approval of the Design Documents submitted.

By approving or failing to object to the Design Documents, in whole or in part, the City does not assume responsibility or liability for design services, nor does it represent acceptance by the City of any deviation or omission from, or conflict or contradiction with the Technical Design Criteria and Facility Program requirements, except as such were specifically changed or waived by the City in writing.

**Section 3.03 Resolution of Disputes.** If the City objects to any aspect of the Design Documents submitted to the City pursuant to Section 3.02 above, or if the City objects to any selection proposed by the Corporation under the alternatives allowed by the Technical Design Criteria, or if there is any other dispute or disagreement between the City and Corporation concerning the design or construction of the Project Work, the following procedures shall apply:

(a) First, the City or the Corporation shall provide to the other party sufficient detail in writing to delineate the basis of its dispute or disagreement.

(b) Third, in the case of the objections to Design Documents, the Corporation shall revise the Design Documents to address the objections of the City, and in the case of all other disputes concerning the design and construction of the Project Work, the Corporation and City shall promptly, and in good faith, meet to attempt to resolve the dispute.

(c) If, following the procedure in (b) above, the City and Corporation have failed to resolve the dispute in question, then within three (3) business days thereafter, the City’s Representative and the President of the Corporation shall meet to resolve the dispute or disagreement.

(d) If the meeting between the City’s Representative and the President of the Corporation has failed to resolve the dispute and the parties elect not to proceed under (e) hereof, then the parties shall proceed pursuant to Article IX hereof.

(e) If the Corporation and the City agree, any unresolved dispute under this Section 3.03 may be submitted to the hearing officer of the Manager of the Department of Transportation and Infrastructure under the procedure set forth in DRMC Section 56-106.

**Section 3.04 Form of Design Submittals.** Submittals of Design Documents by the Corporation to the City shall consist of (i) electronic, if requested by the City, and seven (7) prints of drawings, and (ii) seven (7) copies of specifications.

**Section 3.05 Lead Design Architect.** Subject to causes outside the control of the Corporation, the Corporation agrees that it will cause the Lead Design Architect to remain the lead design architect for the Project Work throughout all design and construction phases of the Project Work, and that the Lead Design Architect shall be available at all times, as may be requested by the City or the Corporation, to review the progress of the Project Work for conformity with the design as encompassed in all approved drawings and specifications. In the event the Lead Design Architect should become unable or unwilling to serve as the lead design architect for the Project Work, the Corporation agrees that the selection of an alternative architect shall be subject to prior written approval by the City's Manager of the Department of Transportation and Infrastructure.

**Section 3.06 Tenant Space Planning and FF&E.** The City agrees that it shall review architectural plans prepared by the Design Builder and shall submit tenant requirements for electrical, mechanical, plumbing, countertop, interior finishes and similar tenant finish items. The City shall document those requirements on schematic design plans provided by the Design Builder and submit those requirements to the Corporation for approval by the Corporation and transmittal to the Design Builder for incorporation into the Design Documents.

The Corporation shall cause the Design Builder to develop area blockouts, prepare full height partition space plans, develop preliminary furniture system plans and furniture specifications satisfactory to the City's Manager of the Department of Transportation and Infrastructure, and coordinate with the selected furniture systems manufacturers' dealer the preparation of furniture system installation drawings. The Corporation agrees it shall require the Design Builder in the Design Build Contract to adjust the tenant finish drawings to accommodate the needs of tenant agencies until the earlier of (i) the date when final Corporation and City approval of final space planning design documents has been received by the Design Builder, or (ii) ninety (90) days prior to the anticipated date that the Corporation places the order for the FF&E. The Corporation, at the Corporation's sole cost from the Project Fund and in cooperation with the City, shall procure and install all FF&E from the furniture systems manufacturers required by City's space programming, except for the FF&E for lobby areas and other general use areas which shall be procured and installed by the Design Builder and the Tenant FF&E which shall be installed by the City. The Corporation agrees that it will not enter into FF&E contracts, nor any amendments thereto, without first having received prior written approval thereof from the City's Manager of the Department of Transportation and Infrastructure. The Corporation shall cause the Design Builder to prepare final partition layouts for all private offices and all interior full height enclosed spaces, complete final telephone and electrical plans, and prepare all necessary construction documents for the tenant improvements and the final furniture layouts. Preparation of final partition layouts, interior space planning construction documents, and the cost of all construction, including full height partitions, shall be the responsibility of the Design Builder. Not later than July 1, 2001, the Corporation shall deliver to the City an FF&E Schedule setting forth the anticipated dates for delivery of the FF&E, commencement and completion of installation of the FF&E including anticipated phased installation. It is the intent of the Design Builder to turn floors over to the Corporation for installation of Owner FF&E and Tenant FF&E in April, 2002. If there is a delay in the Design Builder making floors available in the Building to the Corporation, the



Corporation, in coordination with the City, shall prioritize the completion of FF&E installation on floors to be occupied by City agencies which are presently in leased space, in order to move such agencies into the Building by December 31, 2002. The FF&E Schedule shall obligate the Corporation to achieve FF&E Substantial Completion no later than 235 days following the actual Building Substantial Completion Date. The FF&E Schedule shall be subject to all delays arising from causes beyond the control of the Corporation, including, without limitation, delays in the actual Building Substantial Completion Date.

**Section 3.07 City FF&E Obligations.** The City shall diligently and timely perform the FF&E obligations of the City as set forth in this Exhibit, and all amendments and exhibits thereto. Further, the City shall develop furniture specifications and space planning specifications. The City shall be solely responsible for communicating and coordinating space planning with City agencies. The City and the Corporation acknowledge that the provisions pertaining to FF&E shall be subject to the amounts deposited for FF&E into the Project Fund created by the Indenture and the Lease, which shall be in such amounts as shall be satisfactory to the City's Manager of the Department of Transportation and Infrastructure and the City's Manager of Finance, and the Corporation and the City shall not make any requirements inconsistent with the specific amounts so allocated for FF&E in the Project Fund.

**Section 3.08 FF&E Fee.** The Corporation shall pay or caused to be paid out of the Project Fund to the Developer an FF&E Fee in the amount of \$608,000 for all of the Developer's Services related to the FF&E, which amount shall be payable as follows: commencing on August 1, 2000, and continuing until December, 2001 the Developer shall be paid \$12,000 per month; commencing in January 2002, and continuing through December 2002, the Developer shall be paid \$30,000 per month; and the balance of the FF&E Fee shall be paid upon issuance of the Certificate of FF&E Final Completion. The FF&E Fee is compensation to the Developer for the procurement, installation and management of the installation of all of the FF&E for the Project, exclusive of the General Use FF&E. If the procurement and installation of the FF&E has not been substantially completed by the FF&E Substantial Completion Date, the Developer shall be liable to the Corporation for FF&E Liquidated Damages as determined under Section 9.04 hereof.

#### **IV. COMMENCEMENT AND COMPLETION OF PROJECT**

##### **Section 4.01 [Reserved.]**

**Section 4.02 Project Work.** Upon full execution of the Design Build Agreement, the Corporation shall require the Design Builder to commence and thereafter diligently proceed pursuant to the terms of the Design Build Contract with the construction of the Project Work in accordance with the Design Documents as approved by the City. Design Builder may not commence any construction without first having prepared complete, clear and definite drawings and specifications for such construction work, which have been reviewed and approved by the City pursuant to the time limits provided in the Review Process.

**Section 4.03 Schedules.** The Corporation shall provide the City with copies of all schedules and updates and revisions thereto (collectively, the "Project Work Schedule") for the

design and construction of the Project Work prepared by the Design Builder, the Developer or any scheduling consultants of the Corporation.

The Corporation agrees to promptly advise the City in writing of circumstances actually known to the Corporation which would delay the Design Build Substantial Completion Date, and advise the City in writing thereafter of the nature of the corrective action which is anticipated or which has been undertaken to meet, resolve or correct such circumstance or event. The Corporation shall also give the City written notice of circumstances which are likely to delay the Design Build Substantial Completion Date.

**Section 4.04 Completion Date.** The Corporation agrees that it shall require the Design Builder to have the Project Work substantially complete (exclusive of the procurement and installation of FF&E) on or before the Design Build Substantial Completion Date, as the same may be extended for delays for which an extension of time is permitted under the terms of the Design Build Contract.

**Section 4.05 Construction Representatives.** The Corporation hereby appoints and the City hereby approves the following person as the Corporation's representative ("Corporation's Representative") to act for the Corporation in all matters covered by this Exhibit. The Corporation's Representative is an officer of the Developer and has been authorized to act on behalf of the Corporation in all matters concerning this Exhibit pursuant to the Development Services Agreement. The City hereby appoints and the Corporation hereby approves the following person as City's representative ("City's Representative") to act for City in all matters covered by this Exhibit.

Corporation's Representative

Mike Sullivan  
Vice President  
Mile High Development LLC  
1706 Broadway, Suite 300  
Denver, Colorado 80290  
Fax: 303-830-7573  
Phone: 303-764-7125

City's Representative

Manager of the Department of Transportation  
and Infrastructure  
1437 Bannock  
Room 379  
Denver, Colorado 80202  
Fax: 303-640-2424  
Phone: 303-640-2561

All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Exhibit shall be made to the Corporation's Representative or the City's Representative as the case may be. Either party may change its representative under this Agreement at any time by written notice to the other party.

**V.**

**CERTAIN PROVISIONS RELATING TO CONSTRUCTION**

**Section 5.01 Inspection.** The City, its authorized representatives and consultants, shall be entitled to monitor and inspect, and to provide independent inspection and testing of, the Project Work at any time during the course of construction to assure compliance with the provisions of this Lease subject to procedures pertaining to such inspection as promulgated from time-to-time by Corporation with the prior written approval of the City's Manager of the Department of

Transportation and Infrastructure. The City shall designate up to five (5) individuals (the “City On-Site Team”) who may be present at the Site during construction of the Project Work without the prior approval of the Corporation or the Design Builder; provided that all members of the City On-Site Team shall fully comply with safety regulations established by the Corporation and Design Builder. In no event shall the City or the City On-Site Team hinder or interfere with the progress of the Project Work, nor shall any City representative who is not a member of the City On-Site Team enter upon the Site without first notifying the Corporation’s Representative. The City and City On- Site Team shall at all times comply with any safety precautions required by the Corporation and/or the Design Builder.

**Section 5.02 Geotechnical and Other Reports, Investigations and Tests.** The Corporation acknowledges that certain soils and environmental reports, borings and other geotechnical data have been made available for inspection and review. The City in no way warrants the accuracy or reliability of said borings and other geotechnical data, or of the data, information or interpretations contained in such reports, and is not responsible for any deduction, interpretation or conclusion drawn therefrom by the Corporation or its Design Builder. Said reports may contain interpretations by design professionals of borings and geotechnical data obtained at the Site. Such borings and geotechnical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the design professionals. The Corporation agrees it will make no claim against the City if in the course of its activities hereunder it finds that the actual conditions encountered do not conform to those indicated by the said reports, borings and any other geotechnical data, or those reasonably inferable therefrom or reasonably discoverable by a thorough inspection of the Site by the Corporation or those with whom it may contract; provided that the foregoing restriction on making claims against the City shall not restrict the Corporation from obtaining from the proceeds of the Project Fund reimbursement of, or payment for, any additional costs caused by conditions at the Site.

**Section 5.03 Design Builder’s Surety Bonds.** The Corporation agrees that it will require its Design Builder to furnish a performance and payment bond in an amount equal to one hundred percent of the Guaranteed Maximum Price with respect to the faithful performance of the Design Build Contract and payment of all obligations arising thereunder, with surety acceptable to the Corporation and the City, covering all obligations of the Design Builder under the Design Build Contract regardless of source or tier of performance.

**Section 5.04 No Substitution of Personnel of the Corporation’s Developer.** The Development Services Agreement requires the Developer to make Mike Sullivan available full time as the on-site project manager, and in no event shall Mr. Sullivan be reassigned to other projects of the Developer. In the event Mr. Sullivan resigns, or is otherwise unavailable to the Corporation to continue to serve as the project manager for the Project Work, the Corporation agrees that the selection of alternative personnel as the full time on site project manager shall be subject to prior approval by the City’s Manager of the Department of Transportation and Infrastructure.

**Section 5.05 Project Signs.** The Corporation agrees that it will not post, nor authorize its Design Builder to post any signs on the Site without the prior written approval of the City’s Representative.

**Section 5.06 Corporation's Payments to Design Builder.** The Corporation agrees that it will make monthly progress payments to its Design Builder only of actual costs certified by the Design Builder as having been incurred and based upon a schedule of values and percent of work complete and certified by the Design Builder. The Corporation agrees to provide each month to the City a copy of any preliminary application and a copy of the final application for payment submitted by the Design Builder accompanied by invoices reflecting costs incurred to date and a written schedule of values which sets out the quantities and costs for the Project Work together with the Design Builder's estimate of the percentage of completion of each line item of actual cost of which the Corporation is liable to pay to the Design Builder.

**Section 5.07 Tenant Improvement Allowance.** The Corporation agrees that it shall provide in the Guaranteed Maximum Price of the Design Build Contract a Tenant Improvement Allowance in the amount of Three Million Dollars (\$3,000,000.00), which shall allow for the City to specify to the Corporation, for design and construction or installation by the Design Builder, of above building standard tenant finishes not identified or required in the Technical Design Criteria or Facility Program, including construction and finish of partition walls, special lighting, window coverings, counters and custom casework, special mechanical distribution and control, and secondary distribution to non-core, non-code required electrical and power outlets, and miscellaneous specialties in all parts of the buildings that are not defined as part of core and shell, such as but not limited to acoustical tackable walls, marker boards, office specific landscape features, graphics and signage in office areas, lockers, storage shelving, operable walls in training rooms, and others as required by the City.

**Section 5.08 FF&E Allowance.** The Corporation agrees that it shall provide in the Financing of the Project Work \$9,800,000 for Owner FF&E, for which the City shall be allowed to specify to the Corporation, for design by the Design Builder and for procurement and installation by the Corporation, of FF&E to be installed in the Project.

**Section 5.09 City's Right to Inspect Books and Records.** The Corporation agrees that the City and its authorized representatives, including the City Auditor, shall have the right at all times to examine and inspect all of the Corporation's books and records with respect to the Project and all funds and accounts held by Corporation with respect thereto in Denver, Colorado. The Corporation further agrees that it will require its Developer, Design Builder and other consultants and parties with whom it may contract (except the books and financial records of lump sum contractors, subcontractors or suppliers) with respect to the Project to make their books and records relating to the Project available to the City in Denver, Colorado for examination and inspection by such representatives and consultants of the City, and to require each of their subconsultants and subcontractors to make such books and records available to the City, subject to the limitations set forth above.

**Section 5.10 As-Built Drawings.** The Corporation agrees that it will cause its Design Builder to maintain in good condition at the Site one of the sets of contract drawings and technical specifications in such form as approved by the Corporation and the City. On the above referenced set, the Corporation shall require the Design Builder to record daily all changes and deviations in a neat and legible manner. The Corporation shall require of the Design Builder that any deviation between contract drawings and technical specifications and the work actually done, no matter how insignificant, must be noted thereon. The Corporation shall further require of the Design Builder

that all underground utility structures encountered in performing the Project Work be correctly located on such drawings by means of physical ties or dimensions to permanent monuments or structures. When the Project Work is completed, the Corporation shall require the Design Builder to deliver this single set of contract drawings and technical specification to the Corporation for approval by the Corporation before final payments to the Design Builder can be made. Upon completion of the Project, the Corporation shall provide to the City all shop drawings and as built drawings, including all material in electronic format, and such drawings shall become the property of the City. The Corporation and Design Builder shall be permitted to maintain a copy of the contract drawings, technical specifications and shop drawings as necessary to maintain a contract record file.

**Section 5.11 Shop Drawings, Product Data and Submittals.** The Corporation agrees that it shall keep and maintain for the benefit of the City a submittal log which shall include, at a minimum, the date of receipt of all shop drawings, product data, samples and other submittals received by the Corporation from the Design Builder, the date of any resubmittals, the date of approvals or rejections, and the reasons for any such rejections. The Corporation shall continuously maintain at the Site, for the benefit of the City, a copy of all shop drawings, product data, samples and other submittals. The City shall have the right, in its discretion, to review and approve all such shop drawings, product data, samples and other submittals, and if the City so elects and notifies the Corporation of its election prior to approval of such submittals by the Corporation to the Design Builder, then the Corporation shall cause the Design Builder to not perform any portion of the work as to which the City has required review until the submittal has been approved by the City. The City agrees that its review and approval shall be for consistency with and fulfillment of the requirements of the Technical Design Criteria, the Facility Program and Design Documents previously approved by the City, and that its review shall be in accordance with the time limits specified in the Review Process. If the City objects to any of the items submitted for its review, the City shall provide to the Corporation sufficient detail in writing to delineate the basis of its disapproval, and any disputes concerning the City's review shall be resolved in accordance with the procedure set forth in Section 3.03 of this Exhibit F.

By failing to object to such submittals, in whole or in part, the City does not assume responsibility or liability for the item submitted nor does it represent acceptance by the City of any deviation or omission from or conflict or contradiction with the Technical Design Criteria or the Facility Program requirements or the Design Documents, except as such have been specifically waived in writing by the City's Manager of the Department of Transportation and Infrastructure.

**Section 5.12 Design Build Punch List and Corporation's Final Payment to Design Builder.** When the Corporation believes the Project Work (prior to the installation of the FF&E) is ready for inspection by the City, either in its entirety or on a floor-by-floor basis, the Corporation shall notify the City. The Corporation, the City and the Design Builder will prepare the Design Build Punch List, which must be reasonably acceptable to the City. The Corporation will cause the Design Builder to submit a Design Build Certificate of Substantial Completion for the Project Work (exclusive of the FF&E procurement and installation), which certificate must be jointly signed by the Design Builder and the Lead Design Architect and be acceptable to the Corporation and the City. The Design Build Certificate of Substantial Completion shall include the Design Build Punch List and establish a time for its completion. If the City does not accept the Design Build Punch List submitted by the Design Builder, the City, within five (5) working days following

the City's receipt thereof, shall notify the Corporation of any deficiencies, and the Corporation shall cause the Design Builder to correct such deficiencies and resubmit the Certificate for approval of the Corporation and the City. Although inspection by the Corporation and the City and the preparation of a Design Build Punch List may occur in phases as portions of the Project Work are completed, Design Build Substantial Completion shall occur only for the entire Project Work (other than the installation of FF&E) and will not be phased for portions of the Project Work. Final payment shall not be made to the Design Builder until the Certificate of Completion is issued, the Corporation and the City have approved completion of all items of the Design Build Punchlist and the Design Builder has demonstrated to the operating personnel of the City or its consultants the proper operation and maintenance of all equipment and systems, delivery by the Design Builder to the Corporation for transmittal to the City, in a form satisfactory to the City, of all guarantees and warranties, and all provisions set forth in the Lease for issuance of the Certificate of Completion have been satisfied.

**Section 5.13 FF&E Completion and FF&E Punchlist.** When the Corporation believes the installation of FF&E is ready for inspection by the City, whether on a floor by floor or entire building basis, the Corporation shall notify the City. The Corporation and the City shall prepare the FF&E Punchlist, which must be reasonably acceptable to the City. At such time that all of the FF&E is installed and the FF&E Punchlist work is completed to the satisfaction of the City, the Corporation shall be deemed to have completed the FF&E portion of the Project Work and the Corporation shall issue the Certificate of FF&E Final Completion.

## **VI. CHANGE ORDERS**

**Section 6.01 Corporation/Design Builder Change Orders.** Except as specifically provided in the following sentence, the Corporation shall have the sole discretion to approve or disapprove Change Orders to the Design Build Contract. Notwithstanding the above, the Corporation shall submit to the City, for its review, any Change Order which modifies or supplements the Design Documents. Such review shall be subject to the time limits specified in the Review Process. The Corporation shall provide to the City On-Site Team one set of copies of all proposed Change Orders, proposal requests, field orders, architectural supplemental instructions, requests for information, non-conformance reports, and testing and inspection reports. The Corporation agrees that the quality assurance and quality control program records of the Design Builder and the Corporation and their respective consultants shall be available for inspection by the City at all times.

**Section 6.02 No City Initiated Change Orders.** No Change Order to the Design Build Contract may be initiated by the City with the Design Builder except through the Corporation under the provisions of Section 9.2 of the Lease and subject to funds available in the Project Fund.

## **VII. WARRANTIES**

**Section 7.01 Warranties.** All warranties and guarantees of the Design Builder and such other parties with whom the Corporation may contract, and all of their subcontractors,

manufacturers and suppliers, whether express or implied, for any part of the Project Work and any materials used therein, shall be obtained and enforced in accordance with the terms of the Lease.

The Corporation agrees to require that the Design Builder and such other parties with whom it may contract shall assign or transfer such warranties and guarantees consistent with the terms of the Lease. The City agrees as tenant under the Lease that it shall keep all such warranties and guarantees in full force and effect and shall not knowingly violate or vitiate same.

## **VIII. RETAIL TENANTS**

**Section 8.01 Retail Tenants.** The Corporation and the City shall reasonably cooperate with each other concerning any improvements for retail subleases. The Corporation shall provide in the Design Build Contract that the Design Builder will (to the extent applicable prior to the Design Build Final Completion Date) reasonably coordinate with the contractors for the Sublessees. The City agrees that all subleases entered into prior to the Design Build Final Completion Date shall require the sublessee and its contractors to reasonably coordinate the installation of any retail improvements with the Design Builder and in no event may the sublessee or its contractor delay the Design Build Final Completion Date.

## **IX. DEFAULT**

**Section 9.01 Notice and Cure.** Neither party shall be deemed in default of the provisions of this Exhibit until notice of default is given in accordance with the terms of the Lease. To the extent that notice is provided to the Trustee by either the City or the Corporation, the City or the Corporation shall also provide notice to the other party to the extent that the obligations of the Corporation have not been terminated by the Trustee and the City. The defaulting party under this Exhibit F shall have ten days to cure the default.

**Section 9.02 Default and Remedies.** For unresolved disputes under Section 3.03 hereof and any uncured default hereunder, then, if the Corporation is in default hereunder, the City may pursue all rights and remedies at law or in equity, including liquidated damages as provided in Section 9.03, against the Corporation hereunder; provided that unless and until the City takes the actions described in this Section 9.02, the Corporation may proceed with the design and construction of the Project Work, and if the City is in default hereunder, the Corporation may file an action against the City for specific performance hereunder.

**Section 9.03 Design Build Liquidated Damages.** The parties recognize that time is of the essence of this Lease. In the event that the Project Work to be performed by the Design Builder is not complete by the Design Build Substantial Completion Date, as same may be extended for delays permitted under the terms of the Design Build Contract, the Corporation and City acknowledge and agree that it would be impracticable and extremely difficult to estimate the damages (including, by way of example but without limitation, direct and indirect, incidental, special and consequential damages) which the City might incur for failure of the Project Work (exclusive of the FF&E) to reach Design Build Substantial Completion by the Design Build Substantial Completion Date, as same may be executed pursuant to the terms hereof. Therefore,

the Corporation and the City have determined that a reasonable estimate of the total detriment that the City would suffer in such event is and shall be, as the sole and exclusive remedy of the City for such failure and delay (whether at law or in equity) and not as a penalty, in the amount of \$6,000 per day prior to and including October 15, 2002 and \$30,000 per day following October 15, 2002, and the Corporation agrees to pay such amounts to the City as Liquidated Damages for each day that the Project Work shall remain not Substantially Complete after the Design Build Substantial Completion Date, to the extent such amounts are actually collected by the Corporation from the Design Builder, net of the expenses of collection. The Corporation shall collect any Liquidated Damages from the Design Builder and shall have the right to settle any disputed claims subject to the prior approval of the City, or alternatively, at the City's option, the Corporation may assign its rights to the City to enforce the Liquidated Damages provisions of the Design Build Contract, which assignment shall be full satisfaction of the Corporation's obligation hereunder. Except as provided in Section 9.04 hereof, the amount, so determined shall be the full, agreed and liquidated damages recoverable against the Corporation for the Corporation's breach of any of its obligations or covenants pertaining to timely performance arising under this Lease.

Notwithstanding the foregoing provisions of this section, the Corporation and the City agree that if an Event of Nonappropriation, an Event of Lease Default or an Event of Indenture Default shall occur, the Corporation shall pay all amounts collected as Liquidated Damages to the Trustee for deposit to the Base Rentals Fund and shall not assign its rights to the City to enforce the Liquidated Damages provisions of the Design Build Contract, but rather, at the Trustee's option, the Corporation may assign its rights to the Trustee to enforce the Liquidated Damages provisions of the Design Build Contract.

**Section 9.04 FF&E Liquidated Damages.** The parties recognize that time is of the essence of this Lease. In the event that the procurement and installation of FF&E by the Corporation is not complete by the FF&E Substantial Completion Date, as the same may be extended for delays permitted under the terms of the FF&E Contracts, the Corporation and the City acknowledge and agree that it would be impracticable and extremely difficult to estimate the damages (including, by way of example but without limitation, direct and indirect, incidental, special and consequential damages) which the City might incur for failure of the procurement and installation of FF&E to reach FF&E Substantial Completion by the FF&E Substantial Completion Date. Therefore, the Corporation and the City not later than July 1, 2001 will determine a reasonable estimate of the total detriment that the City would suffer in such event, and the Corporation agrees to pay, as the sole and exclusive remedy of the City for such failure and delay (whether at law or in equity) and not as a penalty, such amounts to the City as Liquidated Damages for each day that the procurement and installation of FF&E shall remain not Substantially Complete by the FF&E Substantial Completion Date, to the extent such amounts are actually collected by the Corporation from the parties with whom the Corporation shall contract for procurement and installation of FF&E into the Project, net of the expenses of collection.

The Corporation shall collect any liquidated damages from such parties with whom it may contract for FF&E and shall have the right to settle any disputed claims subject to the prior approval of the City, or alternatively, at the City's option, the Corporation may assign its rights to the City to enforce the Liquidated Damages provisions of the FF&E Contracts, which assignment shall be full satisfaction of the Corporation's obligation hereunder. The amount so determined shall be the full, agreed and liquidated damages recoverable against the Corporation for the



Corporation's breach of any of its obligations or covenants pertaining to timely FF&E performance arising under this Lease.

The FF&E Liquidated Damages as determined by the Corporation and the City shall be in such amounts as shall be reasonably expected to recover the City's estimate of the total damages the City would suffer in the event of such delays in the procurement and installation of FF&E. The amounts of the FF&E Liquidated Damages as so determined shall be set forth in an FF&E Liquidated Damages Schedule, which will be prepared by the Corporation and the City. The Liquidated Damages Schedule may include phased or floor by floor FF&E Substantial Completion Dates but in no event shall such substantial completion dates be later than 235 days following Building Substantial Completion. The FF&E Liquidated Damages Schedule shall be included in the request for proposals prepared by the Developer for the Owner FF&E, and each manufacturer and installer must be obligated to pay liquidated damages in an amount to be approved by the Corporation and the City. Upon approval in writing by the City's Manager of the Department of Transportation and Infrastructure and the Corporation of the FF&E Liquidated Damages Schedule, the schedule shall be filed with the Denver's City Clerk and made a part of this Lease without the necessity of further approval by Denver's City Council.

Notwithstanding the foregoing provisions of this section, the Corporation and the City agree that if an Event of Nonappropriation, an Event of Lease Default or an Event of Indenture Default shall occur, the Corporation shall pay all amounts collected as FF&E Liquidated Damages to the Trustee for deposit to the Base Rentals Fund and shall not assign its rights to the City to enforce the FF&E Liquidated Damages provisions of the FF&E Contracts, but rather, at the Trustee's option, the Corporation may assign its rights to the Trustee to enforce the FF&E Liquidated Damages provisions of the FF&E Contracts.

## **X. MISCELLANEOUS**

Except at otherwise herein provided, the obligations of the Corporation hereunder may not be assigned, transferred or encumbered except in connection with the Financing and the assignment to the City of the right to receive liquidated damages, as described in Sections 9.03 and 9.04. Notwithstanding any assignment of the Corporation's rights and obligations hereunder to Trustee, the parties hereby acknowledge that Corporation may, pursuant to the terms of the Indenture, continue to perform all obligations of Corporation hereunder. The City may not assign or transfer any rights or obligations hereunder. Nothing herein shall prohibit City from retaining consultants or other professionals necessary for the City's performance hereunder.

The Corporation and City acknowledge that all references to City in this Exhibit is as tenant under the Lease and shall not affect the City with respect to the exercise of its police powers.

## **XI. DEFINITIONS**

"Annex I" shall have the meaning set forth in Section 1.02 of this Exhibit.

"Certificate of Final Completion" shall have the meaning assigned to such term in Section 1.2 of the Lease.

“Certificate of FF&E Final Completion” shall mean a Certificate from the Corporation to the City certifying that the FF&E has been installed and all FF&E Punchlist items completed.

“Change Order” shall mean a change to the Guaranteed Maximum Price, the Design Build Substantial Completion Date, the Design Documents or other aspects of the design and construction of the Project authorized in writing by the Corporation pursuant to the Design Build Contract, or a change to the FF&E Schedule or FF&E procurement costs after ordering thereof or a change in the FF&E installation costs.

“City” shall mean the City and County of Denver, in its capacity as tenant only.

“City Auditor” shall mean the duly elected auditor for the City.

“City Council” shall have the meaning set forth in Section 1.2 of the Lease.

“City On-Site Team” shall have the meaning set forth in Section 5.01 of this Exhibit.

“City Treasury” shall mean the account or accounts designated by the City Auditor from which payment shall be made for the amounts specified in the Pre-Financing Project Budget.

“City’s Representative” shall have the meaning set forth in Section 4.06 of this Exhibit.

“Corporation’s Representative” shall have the meaning set forth in Section 4.05 of this Exhibit.

“Design Build Contract” shall have the meaning set forth in Section 1.2 of the Lease.

“Design Build Punch List” shall mean those items of the Project Work which remain to be completed when the Project Work (exclusive of FF&E) has otherwise reached Design Build Substantial Completion, as identified on a list prepared by the Design Builder, which list is subject to the approval by the Corporation and City.

“Design Builder” shall mean Hensel Phelps Construction Co.

“Design Build Substantial Completion” shall mean when (i) all vertical transportation systems of the Project Work are 100% complete and accepted by the Corporation and City, (ii) a temporary certificate of occupancy for all of the Project Work described in the Design Build Contract has been issued; and (iii) the improvements on the Site can be occupied or utilized for their intended purpose, as reasonably determined by the Corporation and the City. In no event does Design Build Substantial Completion include the procurement and installation of the FF&E, other than General Use FF&E. The term “Design Build Substantial Completion” is referred to as “Building Substantial Completion” in the Design Build Contract.

“Design Build Substantial Completion Date” shall mean August 15, 2002, as such date may be extended pursuant to the terms of this Exhibit and the Design Build Contract.

“Design Development Documents” shall mean the documents prepared by the Design Builder and approved by the City hereunder and the Corporation pursuant to the Design Build

Contract, which documents shall be prepared from the schematic design documents to be attached to the executed Design Build Contract and shall include the drawings, specifications and other documents necessary, in the judgement of the City, the Corporation and the Design Builder, to fix and describe the size and character of the Project Work (exclusive of FF&E), as to structural, mechanical and electrical systems, materials and such other essential items as may be deemed appropriate by the City, the Corporation and Design Builder.

“Design Documents” shall have the meaning set forth in Section 3.02 of this Exhibit.

“Designer” shall mean individually or collectively the Lead Design Architect, engineers and other consultants used for design purposes under the Design Build Contract.

“Developer” shall mean Mile High Development, LLC, a Colorado limited liability company.

“Developer’s Fee” shall have the meaning set forth in Section 2.05 of this Exhibit.

“Development Services Agreement” shall mean the Development Services Agreement to be entered into by and between Corporation and Developer.

“Developer Services” shall mean all services that Developer will provide with respect to the Project Work.

“DRMC” shall have the meaning set forth in Section 1.2 of the Lease.

“Facility Program” shall mean the contents of that certain bound volume identified as the “Facility Program,” as attached to the Design Build Contract as Exhibit E thereto.

“FF&E” shall have the meaning set forth in Section 1.05 of this Exhibit. FF&E, as used herein, shall include Owner FF&E, as such term is defined in the Design Build Contract. FF&E shall not, however, include General Use FF&E or Tenant FF&E (as defined in the Design Build Contract).

“FF&E Contract” shall mean any Project Contract entered into by the Corporation for the acquisition or installation of FF&E into the Project.

“FF&E Liquidated Damages Schedule” shall have the meaning set forth in Section 9.04 of this Exhibit F.

“FF&E Punch List” shall mean those items pertaining to the procurement and installation of the FF&E which remain to be replaced or completed when the FF&E has been installed, as identified on a list prepared and approved by the Corporation and the City.

“FF&E Schedule” shall mean a schedule prepared by the Corporation or its consultants which outlines anticipated dates for ordering, receiving and installing the FF&E as more specifically set forth in Section 3.06 hereof.

“FF&E Substantial Completion” shall mean the procurement and installation of FF&E for a floor, or the entire Project, as agreed to by the City and Corporation, so that the intended occupants of that portion of the Project may beneficially utilize the Project for the normal conduct of their business operations, without material interference or disruption. FF&E Substantial Completion may not necessarily be delayed by the failure of any one or more components of the FF&E to be delivered, installed or in good working order, if such failure does not materially interfere or disrupt normal business operations in such portion of the Project.

“FF&E Substantial Completion Date” shall mean the date which is two hundred and ten calendar days following the Design Build Substantial Completion Date, as such date may be extended pursuant to the terms of this Exhibit and the FF&E Contracts.

“Financing” shall mean the execution and delivery of Certificates of Participation as defined in Section 1.2 of the Lease.

“General Use FF&E” shall mean the furniture, fixtures and equipment for the lobby and general use areas of the Civic Center Office Building and General Use FF&E is to be procured and installed by the Design Builder as part of the Guaranteed Maximum Price.

“Guaranteed Maximum Price” shall mean the maximum aggregate amount which is payable to the Design Builder for the design and construction of the Project Work, which amount shall be established pursuant to Article VII of the Design Build Contract.

“Indenture” shall have the meaning assigned to such term in Section 1.2 of the Lease.

“Initial Developer’s Fee” shall have the meaning set forth in Section 2.05 of this Exhibit.

“Lead Design Architect” shall mean David Owen Tryba, individually.

“Lease” means this Amended and Restated Build to Suit Lease Purchase Agreement as same may be amended.

“Manager of the Department of Transportation and Infrastructure” shall mean the duly appointed Manager of the Department of Transportation and Infrastructure pursuant to the Charter.

“Project Fund” shall mean the project fund to be created pursuant to and defined in the Indenture.

“Project Work” shall have the meaning set forth in Section 1.05 of this Exhibit.

“Project Work Schedule” shall have the meaning set forth in Section 4.03 of this Exhibit.

“Public Service Utilities” shall mean those certain utility lines and related equipment located on or under the Site (other than those serving Annex I) as of the date of this Exhibit.

“Punchlist” shall mean the list of items remaining to be completed as a condition precedent to providing the Certificate of Final Completion.

“Review Process” shall have the meaning set forth in Section 3.02 of this Exhibit.

“Site” shall mean the real estate legally described in Exhibit A to the Lease.

“Technical Design Criteria” shall mean the “Technical Design Criteria” section of that certain bound volume attached to the Design Build Contract as Exhibit D thereto.

“Tenant Improvement Allowance” shall have the meaning set forth in Section 5.07 of this Exhibit.

“Trustee” shall have the meaning set forth in Section 1.2 of the Lease.

## ATTACHMENT 1

### Review Process Civic Center Office Building February 23, 2000

#### Item to review

#### Timeframe From City's Receipt

Approve Trend item after final pricing (> \$1 million)  
Approve Trend item after final pricing (< \$1 million)  
Review formal Drawing submission (SD, 50% DD, etc.)  
Review RFI response from designer or consultant to contractor  
Issue revisions to Technical Design Criteria and/or

5 work days  
2 workdays  
9 work days  
1 workday

#### The Facility Space Program 10 work days after final decision

Review/approve interior finish materials  
Review Design/Builder pay applications  
Review Change Orders  
Review testing and inspection reports  
Review punch list corrective work

15 work days  
3 workdays  
5 workdays  
3 workdays  
3 work days

The following items relate to the review time for a City-specific item, the Non-Conformance Report (NCR). This report is to be submitted by the third-party independent testing & inspections agency, as directed by the City. The NCR will be used to point out major areas of non-compliance with the final construction documents and/or specifications:

#### Item to review

#### Timeframe From City's Receipt

Review initial Non-Conformance Report (NCR) item  
Review Design/Builder's NCR proposed corrective resolution  
Review Designer's NCR response on the proposed resolution  
Review final NCR corrective work

3 workdays  
7 work days  
5 work days  
2 work days

**EXHIBIT G**

**FORM OF NOTICE OF LEASE RENEWAL**

To: Zions Bancorporation, National Association, as Assignee and Trustee  
1001 17th Street, Suite 850  
Denver, Colorado 80202  
Attention: Corporate Trust Department

The undersigned is the Manager of Finance of the City and County of Denver, Colorado (the "City"), the tenant or lessee under that certain Fourth Amended and Restated Build To Suit Lease Purchase Agreement No. 2023, dated \_\_\_\_\_, 2023 (the "2023 Lease"), between the City and Civic Center Office Building Inc., the landlord or lessor thereunder. I am familiar with the facts herein certified and am authorized and qualified to certify the same. The undersigned hereby states and certifies:

(a) the City has effected or intends to effect on a timely basis an Appropriation for the ensuing Fiscal Year which includes (1) sufficient amounts authorized and directed to be used to pay all of the Base Rentals estimated to become due and (2) sufficient amounts to pay such Additional Rentals as are estimated to become due, all as further provided in Sections 6.2 and 6.4 of the 2023 Lease, whereupon, the 2023 Lease shall be renewed for the ensuing Fiscal Year;

Initial

or

(b) the City has determined not to renew the Lease for the ensuing Fiscal Year.

Initial

**CITY AND COUNTY OF DENVER, COLORADO**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its Manager of Finance or the Manager's Designee

## EXHIBIT H

### THE AMENDED AND RESTATED ASSIGNMENT AND THE AMENDED AND RESTATED ASSUMPTION AGREEMENT

#### AMENDED AND RESTATED ASSIGNMENT

For value received, CIVIC CENTER OFFICE BUILDING INC., as landlord or lessor (the “Corporation”), hereby sells, absolutely assigns and transfers in trust unto Zions Bancorporation, National Association, as trustee under a Third Amended and Restated Mortgage and Indenture of Trust dated \_\_\_\_\_, 2023, as supplemented and amended from time-to-time (the “2023 Indenture”) with the Corporation, all of the Corporation’s right, title and interest in (i) the 2023 Lease, (ii) all Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under the 2023 Lease and (iii) the Leased Property described in the 2023 Lease and reversions, if any, therein, without recourse, representation or warranty, provided, however, that notwithstanding such assignment, the Corporation reserves the rights and obligations defined as Reserved Rights under the 2023 Lease and the right to amend the 2023 Lease as provided in the within 2023 Lease and the 2023 Indenture.

Dated: \_\_\_\_\_, 2023

**CIVIC CENTER OFFICE BUILDING INC.,**  
as Landlord or Lessor  
By **DENVER PUBLIC FACILITIES TRUST 2023**  
By its Trustee  
**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Zions Bank Division  
Its: Authorized Representative

#### AMENDED AND RESTATED ASSUMPTION AGREEMENT

Zions Bancorporation, National Association, as trustee under a Third Amended and Restated Mortgage and Indenture of Trust dated \_\_\_\_\_, 2023, as supplemented and amended from time-to-time (the “2023 Indenture”) and assignee under the Amended and Restated Assignment set forth above, hereby (A) accepts all of the right, title and interest of Civic Center Office Building Inc., as landlord or lessor (the “Corporation”), in (i) the 2023 Lease, (ii) all Base Rentals, other Revenues and collateral, security interests and attendant rights and obligations derived under the 2023 Lease and (iii) the Leased Property described in the 2023 Lease and reversions, if any, therein and (B) acknowledges and assumes the obligation to perform and satisfy all the terms, covenants and conditions of the 2023 Lease on the part of the Corporation to be performed except for those obligations of the Corporation which are Reserved Rights as defined in the 2023 Lease and the Corporation’s right to amend the 2023 Lease as provided in the 2023 Lease and the 2023 Indenture.

Dated: \_\_\_\_\_, 2023

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Zions Bank Division  
Authorized Representative



## EXHIBIT I

### IMPROVEMENTS PROJECT

**PROJECT SCOPE:** The finishes in the Original Project are generally 20 years old and are in need of updated investment, including furniture, carpet, paint and collaborative office space configurations. Accordingly, the City has determined that the Original Project requires significant renovation and rehabilitation in order to facilitate the consolidation of office space for employees currently working from different locations into an efficient and collaborative setting through enhanced utilization of space (the “Improvements Project”). The Improvements Project will upgrade dated and worn-out office finishes to meet current office building standards, codes and ADA requirements.

It is anticipated the Improvements Project will upgrade the Original Project in a way that promotes physical well-being for the City’s employees through a positive and healthy work environment. In addition to carpet, paint, and finishes, highlights include, accessibility improvements, construction of added wellness rooms (mother’s room/health room), much-needed technology upgrades, space configurations for collaboration and efficiency, increased cubicle space for added employees and growth in a hybrid environment, replacement of discontinued and outdated furniture systems. Where possible, high efficiency appliances will be installed in break rooms and high efficiency lavatory faucets, as well as other flush/flow fixtures, installed as fixtures are being replaced.

There are no exterior improvements anticipated in the scope of this project.

The interior renovation scope may include, but is not limited to, staff open and private offices, conference rooms, break areas, secure storage areas, public interface spaces, and other support functions. The project will require a phased and partial renovation including partial demolition, new interior construction, updated finishes, data and technology upgrades, limited mechanical upgrades as needed, limited electrical and plumbing (“MEP”) systems as impacted, and security. Multiple utilities are shared between occupied floors within the Webb Building and phased and occupied construction will need to be analyzed to minimize disruption of services to continuously occupied portions of the building. The existing fire alarm system will need to be protected and kept functional per code requirements.

The public facing spaces within the Webb Building will need to be kept accessible during all phases of construction as well as some upper floors of the building that will not be renovated within this scope (including City Attorney’s Office (“CAO”) and other departments to be determined). This project is on a dense urban site requiring considerations for site logistics, access, and coordination with multiple City agencies.