

CONSTRUCTION REIMBURSEMENT AGREEMENT

THIS CONSTRUCTION REIMBURSEMENT AGREEMENT (this “Agreement”), is made and entered into as of the Effective Date (as hereinafter defined), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and Colorado municipal corporation (the “City”) and **EAS ENERGY PARTNERS LLC**, a Delaware limited liability company (“EAS” and referred to herein together with the City as the “Parties” or each individually as a “Party”).

RECITALS

This Agreement is made with respect to the following facts:

A. The City owns the property known as the “National Western Center” located in the City and County of Denver (the “Project Site”).

B. The City and other equity partners participating in the ownership and management structure for the National Western Center (collectively, the “Partners”) have entered in that certain Framework Agreement, dated August 30, 2017 (the “Framework Agreement”), governing the future use and development of the Project Site, including the delivery and management of certain public improvements and other infrastructure.

C. Pursuant to the terms of the Framework Agreement, the Partners have formed an entity (the “Authority”) to control, operate, and manage the Project Site on and subject to the terms and conditions set forth in the Framework Agreement.

D. Pursuant to the terms of the Framework Agreement, the City has agreed to complete certain horizontal infrastructure work on and to the Project Site, including work associated with the delivery of utility services to the Project Site and the preparation of building envelopes within the Project Site (the “Horizontal Work”).

E. The Authority and EAS are parties to that certain Campus Energy Agreement, dated _____, 2020 (the “CEA”), whereby the Authority and EAS have entered into a long-term arrangement for EAS to provide certain energy-related services to certain portions of the Project Site on and subject to the terms and conditions set forth in the CEA. As contemplated in the CEA, certain elements of the Horizontal Work to be provided by the City on the Project Site will be utilized by EAS for the construction and delivery of the services to be provided by EAS under the CEA.

F. To facilitate the design and construction of Horizontal Work on the Project Site, the City currently has in place (i) the National Western Center Horizontal Design Services On-Call Agreement, between the City and Merrick & Company (the “Design Consultant”), dated April 9, 2018 (the “Design Contract”), and (ii) the Horizontal Integrated Construction Services Contract between the City and Hensel Phelps Construction Co. (the “Contractor”), dated June 25, 2018 (the “Construction Contract”).

G. The Horizontal Work to be completed by the City on the Project Site will include the construction work necessary to achieve satisfaction of the "Pipe Ready Condition" and the design and construction work necessary to achieve the "Pad Ready Condition," as such terms are defined in Appendix 3-F of the CEA. As used herein, the term "Energy Site Work" shall mean and refer collectively to all work required to achieve satisfaction of the Pipe Ready Condition and the Pad Ready Condition.

H. The Parties now wish to provide for the completion and payment of the Energy Site Work on and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby promise and agree as follows:

1. **Line of Authority for Contract Administration.** The Executive Director ("Executive Director") of the Mayor's Office of the National Western Center, or his designee or successor in function, hereby authorizes and directs all work performed under this Agreement. The Executive Director hereby designates the Office of the National Western Center's Program Director (referred to herein collectively as the "Project Manager") as the Executive Director's authorized representatives for purposes of administering, coordinating and approving all work performed under this Agreement and to otherwise act on behalf of the City under this Agreement. The Executive Director expressly reserves the right to designate other authorized representative(s) to perform on the Executive Director's behalf by written notice to EAS. The Executive Director, or his designee or successor in function, shall have the right and authority on behalf of the City to (1) execute any notices, approvals, agreements, or other written communications or documents as may be necessary in the administration of this Agreement or otherwise in connection with the Energy Site Work, (2) execute any amendments to this Agreement as may be necessary in connection with the design, construction, or funding for the Energy Site Work, and (3) take any other actions necessary to provide for the completion of the Energy Site Work as contemplated under this Agreement.

2. **Design.** The City, through the Design Contract, shall engage the Design Consultant to fully design the Pad Ready Condition (the "Pad Ready Design"). Pursuant to the terms of the CEA (including Appendix 3-F), EAS will provide the design for the Pipe Ready Condition (the "Pipe Ready Design"). As set forth in Attachment A to Appendix 3-F to the CEA, EAS has provided an initial design and related scope information for the Pipe Ready Condition (the "Initial Pipe Ready Design"). EAS will complete all work necessary to generate and deliver to the City a final Pipe Ready Design based upon and consistent with the Initial Pipe Ready Design. If the final Pipe Ready Design includes any material changes to, or variations from, the Initial Pipe Ready Design which change or variation results from a direction or request made by EAS (a "Pipe Design Change"), the City shall provide written notice to EAS (a "Design Change Notice") of the incremental cost associated with such Pipe Design Change(s) (the "Design Cost Impact"). EAS shall give written notice to the City of its approval or denial of the Design Cost Impact described in a Design Change Notice within ten (10) calendar days after receipt of the Design Change Notice (such 10 calendar day period is referred to herein as the "Design Cost Review Period"). If EAS

approves of the Design Cost Impact set forth in a Design Change Notice, the Design Cost Impact shall be added to the Fixed Amount payment to be made by EAS under Section 6 of this Agreement. Any failure by EAS to respond in writing to a Design Cost Notice from the City by 5:00 p.m. (Denver time) on the date on which the Design Cost Review Period expires shall be deemed to constitute EAS's agreement to approve the Pipe Design Change and pay the Design Cost Impact. If EAS provides a timely notice to the City declining to proceed with the Pipe Design Change, EAS shall generate and deliver a final Pipe Ready Design to the City without the Pipe Design Change. The Pad Ready Design and the Pipe Ready Design will be in compliance with the descriptions of and specifications set forth in this Agreement and any applicable technical requirements set forth in the CEA. The Pad Ready Design shall be performed by the Design Consultant at the direction of the Project Manager pursuant to all of the terms and conditions set forth in the Design Contract (which terms and conditions include the obligation to perform the Pad Ready Design in compliance with all applicable laws, governmental approvals and good industry practice). The Pipe Ready Design shall be performed by EAS in compliance with all applicable laws, governmental approvals and good industry practice. Without derogating from or otherwise limiting any of the rights and remedies of EAS under the CEA, in no event shall the City have any responsibility or liability to EAS for any aspect of the Pad Ready Design and EAS hereby waives and releases the City from and against any and all claims relating to the Pad Ready Design of any kind or nature whatsoever. Without derogating from or otherwise limiting any of the rights and remedies set forth in the CEA, the Pipe Ready Design shall be delivered by EAS to the City on an "as-is" basis without representation or warranty and EAS, its contractors, employees and other persons for whom EAS is contractually or legally responsible, shall have no liability or responsibility to the City, the Design Consultant or the Contractor in respect of same.

3. **Construction.** The City, through the Construction Contract, shall engage the Contractor to complete all Energy Site Work (the "Construction Work"). The Construction Work will be in compliance with the Pad Ready Design and the Pipe Ready Design and the descriptions of and specifications for the Energy Site Work set forth in this Agreement. The Construction Work shall be performed by the Contractor at the direction of the Project Manager pursuant to all terms and conditions set forth in the Construction Contract (which terms and conditions include the obligation to perform the Energy Site Work in compliance with all applicable laws, governmental approvals and good industry practice) and as may be required to achieve satisfaction of the Pipe Ready Condition and Pad Ready Condition. Without derogating from or otherwise limiting any of the rights and remedies of EAS under the CEA, in no event shall the City have any responsibility or liability to EAS for any aspect of the Construction Work and EAS hereby waives and releases the City from and against any and all claims relating to the Construction Work of any kind or nature whatsoever.

4. **Achievement of Pipe Ready Condition and Pad Ready Condition.** The Parties acknowledge and agree that the determination of whether the Pipe Ready Condition and the Pad Ready Condition, in each case, has been achieved shall be made in accordance with Section 3.3 of the CEA. The City shall cooperate with EAS and the Authority in the administration of the terms and conditions of Section 3.3 of the CEA. The status of the achievement of each of the Pipe Ready Condition and the Pad Ready Condition shall not limit the rights of the parties under the CEA.

5. **City Responsible for Design Consultant and Contractor.** Nothing in this Agreement will create any contractual relationship between EAS and either of the Design Consultant or the Contractor. Neither the Design Contract nor the Construction Contract shall impose any obligation or liability upon EAS or any person for whom EAS is legally or

contractually responsible. The City shall supervise and, as between EAS and the City, be fully responsible for all actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable law or contract by the Design Consultant or the Contractor or any of their employees, subcontractors or other persons for whom the Design Consultant or Contractor may be legally or contractually responsible in respect of the portion of the Energy Site Work completed by the Design Consultant or the Contractor.

6. **Payment.** EAS shall be responsible for a total fixed contribution for all costs incurred by the City in completing the Energy Site Work (including the Pad Ready Design and all Construction Work) and achieving the Pad Ready Condition and the Pipe Ready Condition in the amount of the sum of (i) three million, seven hundred and sixty-one thousand and NO/100 Dollars (\$3,761,000), which is inclusive of any applicable taxes, plus (ii) any Design Cost Impact approved or deemed approved by EAS under Section 2 of this Agreement (the “Fixed Amount”). Both EAS and the City hereby agree that the Fixed Amount is a fair and accurate estimate of the cost and value of the Energy Site Work to be completed by the City and achieve the Pipe Ready Condition and Pad Ready Condition and each Party hereby waives any right to seek or claim an increase or decrease to the Fixed Amount based on the actual costs incurred.

7. **Payment Terms.** The Parties recognize that the City will initially process and incur all costs associated with the design and construction of the Energy Site Work under its Design Contract and the Construction Contract. The Parties intend to provide for the prompt and efficient reimbursement to the Fixed Amount by EAS. The City shall submit an invoice (together with wire transfer instructions) for the full Fixed Amount set out in clause (i) of Section 6 on the “Effective Date” under the CEA and EAS shall make payment of that portion of the Fixed Amount within sixty (60) days after EAS’s receipt of such invoice from the City. The City shall submit an invoice (together with wire transfer instructions) for the full Fixed Amount set out in clause (ii) of Section 6, if any, within thirty (30) days after the expiry date of the Design Cost Review Period and EAS shall make payment of that portion of the Fixed Amount within sixty (60) days after EAS’s receipt of such invoice from the City. The Fixed Amount payable by EAS to the City shall be made to the “Manager of Finance” at the following address:

Denver Department of Finance
201 West Colfax Avenue, Department 1010
Denver, CO 80202

8. **Appropriation.** Any payment obligation by the City, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. All payments under this Agreement shall be paid from funds of the City that have been duly appropriated and encumbered for the purposes hereof. The City has no obligation to make payments from other sources to satisfy such payments. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement.

9. **No Discrimination in Employment.** In connection with the performance of any work under this Agreement, EAS may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. EAS agrees to insert the foregoing provision in any contracts or subcontracts relating hereto.

10. **Notices.** Notices, bills, invoices or reports required by this Agreement shall be in writing and shall be deemed sufficiently delivered if sent in the United States mail, postage prepaid, or by overnight commercial courier (such as FedEx), addressed to the Parties at the following addresses:

to the City:

Mayor's Office of the National Western Center
201 West Colfax, Dept. 205
Denver, CO 80202

with a copy to:

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

to EAS:

with a copy to:

The addresses may be changed by the Parties by written notice.

11. **Remedies.** In the event of a default, in addition to any remedies that may be available to the Parties in law or in equity, the Parties shall be entitled to seek specific performance or injunctive relief to enforce the provisions of this Agreement. However, prior to filing legal

action, the Party alleging the default shall first provide notice of the default to the other Party and allow a minimum of twenty (20) days to cure the default.

12. **Disputes.** It is the intention of the Parties to this Agreement that, subject to the immediately following sentence, all disputes of any nature whatsoever regarding this Agreement, including, without limitation, any claims for compensation for damages arising out of any claimed breach or default under this Agreement, shall be resolved by administrative hearing pursuant to the provisions of Section 56-106 of the Denver Revised Municipal Code. To the extent that the dispute involves common factual or legal issues with a previously initiated dispute under the CEA, then the proceedings to resolve the dispute under this Agreement shall be consolidated or joined with the dispute under the CEA and continued under the dispute resolution procedures under the CEA. For greater certainty, the City shall be entitled to give evidence and otherwise participate in any such proceeding under the dispute resolution procedures under the CEA.

13. **No Waiver of Rights under CEA.** Nothing in this Agreement shall in any way derogate from or limit the rights and remedies of EAS or the Authority under the CEA in respect of or relating to the Energy Site Work, including under Article 10 thereof.

14. **Amendments.** This Agreement may be amended only by written instrument duly executed by the Parties. This Agreement shall be binding upon and inure to the benefit of the City and EAS and their permitted successors, assigns and legal representatives.

15. **Governing Law and Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. The Parties consent to venue for any legal action relating to the Agreement being in the District Court in and for the City and County of Denver. In any legal action for damages or to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

16. **Electronic Signatures and Effective Date.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same Agreement. EAS consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original. As used herein, the term "Effective Date" shall mean the date shown on the signature page for the City.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGES FOLLOW]

Contract Control Number: FINAN-202054979-00
Contractor Name: EAS ENERGY PARTNERS LLC

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City
and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

FINAN-202054979-00
EAS ENERGY PARTNERS LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)