

CONTINGENT COMMITMENT AGREEMENT
BETWEEN
THE CITY AND COUNTY OF DENVER, COLORADO
AND
THE NATIONAL WESTERN CENTER AUTHORITY

Dated: _____, 2020

THIS CONTINGENT COMMITMENT 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 a municipal corporation of the State of Colorado (the “**City**”), and the NATIONAL WESTERN CENTER AUTHORITY, a Colorado nonprofit corporation (the “**Authority**”).

Recitals

A. The City is a home rule city and a municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the charter of the City (the “**Charter**”). 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, the Board of Governors of the Colorado State University System, acting by and through the Colorado State University System (“**CSU**”), and The Western Stock Show Association, a Colorado non-profit corporation (“**WSSA**”) are parties to the National Western Center Framework Agreement, dated September 28, 2017 (the “**Framework Agreement**”), governing the use and development of the Project Site. The City, CSU, and WSSA are referred to herein collectively as the “**Partners.**”

C. The Partners have formed the Authority as a Colorado nonprofit corporation to control, operate, and manage the Project Site on behalf of the Partners 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 and the Authority have executed that certain Master Lease Agreement, dated May 4, 2018 (the “**Master Lease**”), whereby the City agreed to grant a leasehold interest in and to the Project Site on and subject to the terms and conditions set forth in the Master Lease.

E. As contemplated in the Framework Agreement, the Authority has taken steps to provide for and deliver certain campus-wide services to and for the Project Site, including a district energy system (the “**District Energy System**”) to heat and cool Buildings within the Service Area (as defined below). The terms and conditions relating to the District Energy System are set forth in that certain Campus Energy Agreement, dated _____, 2020 (the “**CEA**”), between the Authority and EAS Energy Partners LLC, a Delaware limited liability company (“**EAS**”). Under the CEA,

the District Energy System will provide service to the seven (7) buildings to be located within a portion of the Project Site commonly known and referred to as “Phase 1 and Phase 2” as described in the CEA (referred to herein as the “**Buildings**” or the “**Service Area**”).

F. CSU will own or control a portion of the land within the Service Area and is undertaking efforts to design and build certain Buildings and related facilities on that portion of Service Area (collectively, the “**CSU Buildings**”). Pursuant to the terms of that certain Operations and Maintenance Services Agreement, dated _____, 2020, between CSU and the Authority (the “**CSU O&M Agreement**”), (i) CSU will be responsible for payment to the Authority of an allocated share based upon connected capacity as established and reflected in the CSU O&M Agreement (the “**CSU Share**”) of the Authority Obligations (hereinafter defined) and (ii) the Authority (through EAS pursuant to the CEA) will provide operations and maintenance services to CSU Buildings.

G. WSSA will own or control a Building within the Service Area commonly known and referred to as the Legacy Building (the “**WSSA Building**”). Pursuant to the terms of that certain Operations and Maintenance Services Agreement, dated _____, 2020, between WSSA and the Authority (the “**WSSA O&M Agreement**”), Authority (through EAS pursuant to the CEA) will provide operations and maintenance services to the WSSA Building and WSSA will be responsible for payment to the Authority of an allocated share of all charges, fees, and other obligations that arise under the CEA for the aforementioned services as established and reflected in the WSSA O&M Agreement.

H. As a condition to its execution of the CEA, EAS has requested that the City provide a commitment to support the monetary obligations of the Authority under the CEA (the “**Authority Obligations**”) on the terms and conditions set forth herein.

I. As reflected in the Framework Agreement, the City supports the goals and mission of the National Western Center generally and also supports the implementation of the District Energy System within the Service Area. In consideration of the benefits to be derived by the City and its inhabitants as a result of the completion of the National Western Center project and the District Energy System, the City deems it appropriate to provide to the Authority the requested commitment for payment of the Authority Obligations, to the extent and upon the terms and conditions set forth herein, and contingent on appropriation therefor.

J. By tapping into thermal energy from wastewater to generate energy to heat and cool the Buildings, the District Energy System will enable the National Western Center to avoid approximately 2,600 metric tons of carbon dioxide emissions, the equivalent of 300,000 gallons of gasoline, each year, contributing to cleaner air and healthier Denver communities by avoiding reliance on natural gas combustion (collectively, the “**Environmental Benefits**”).

K. In furtherance of that support, the City also wishes to transfer to the Authority the nonexclusive right to enter upon, use, occupy, and control all portions of the Service Area that are identified in the CEA as necessary for the District Energy System and to confirm the Authority’s right to transfer such rights to EAS on the terms set forth in the CEA until the terms of the Master Lease control.

L. The Authority has agreed to repay to the City any funds paid by the City in support of the CEA obligations, on the terms and from the sources specified herein.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals, and the following terms and conditions, the City and the Authority each hereby promise and agree as follows:

ARTICLE I LINES OF AUTHORITY FOR CONTRACT ADMINISTRATION

Section 1.01 For the City. The Manager of the City’s Department of Finance, or their designee or successor in function (the “**Manager**”) shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the City under this Agreement. The Manager may designate an individual to act on behalf of the City as the Manager’s authorized representative for this Agreement (the “**City Representative**”). The Manager expressly reserves the right from time-to-time to designate another City Representative to perform on the Manager’s behalf by written notice to the Authority.

Section 1.02 For the Authority. The Chief Executive Officer of the Authority or their designee or successor in function (the “**CEO**”) shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the Authority under this Agreement. The CEO may designate an individual to act as the CEO’s authorized representative for this Agreement (the

“Authority Representative”). The CEO shall not designate, change or replace the individual acting as the Authority Representative without obtaining the prior written approval of the Manager.

ARTICLE II REMITTANCE ACCOUNT

Section 2.01 Remittance Account. Within ninety (90) days after the Effective Date, the Authority shall set up and establish a remittance account (the **“Remittance Account”**) dedicated solely to (i) the collection of revenues for all obligations arising under the CSU O&M Agreement, the WSSA O&M Agreement (the CSU O&M Agreement and the WSSA O&M Agreement are collectively referred to herein as the **“O&M Agreements”**), the City Payments (defined below), and any and all revenues received from any third-parties for services provided by the District Energy System for events or other purposes (collectively, the **“CEA Related Payments”**), and (ii) the payment of all Authority Obligations arising under the CEA. During the Term of this Agreement, the Authority shall provide to the City quarterly statements of the Remittance Account showing all activity in the Remittance Account during the corresponding period. If required by EAS (or EAS’s financiers), the Authority shall grant a collateral assignment of, security interest in, or otherwise pledge, the CEA Related Payments and funds held in the Remittance Account to EAS as security for the Authority Obligations under the CEA (the **“Remittance Account Pledge”**), and the City hereby acknowledges and consents to the Remittance Account Pledge contained in the CEA. In the event of a termination of the CEA and upon payment in full of all Authority Obligations due and payable under the CEA (including Termination Compensation, as defined in the CEA), thereafter all funds held in the Remittance Account, and all future CEA Related Payments made under the O&M Agreements or otherwise, shall be disbursed to the City in proportion to the share of the Termination Compensation paid by the City pursuant to any Appropriation Request issued by the City with respect to any Termination Funding Notice received by the City under this Agreement; provided that the City may, in its discretion, permit the Authority to direct payments from the Remittance Account to any substitute contractors engaged by the Authority, and approved by the City, to provide materials or services previously provided under the CEA in an amount and on terms approved by the City; and provided further that the City shall have the right and option to select and engage any such substitute contractors directly.

Section 2.02 Revenue Held in Remittance Account. The Authority shall deposit and hold all CEA Related Payments in the Remittance Account. All payments to EAS under the CEA shall be made by the Authority from the funds held in the Remittance Account. As compensation for the performance

of the contract administration obligations under the CEA and O&M Agreements, and as reimbursement for its expenses related thereto, the Authority shall be entitled to charge an administrative fee (the “**Administrative Fee**”) in an amount not to exceed \$110,000.00 per calendar year. The Administrative Fee shall be subject to escalation adjustment each calendar year on January 31, starting on January 31, 2021, equal to the percentage change in the CPI Index (as defined below) for the month of January versus the CPI Index for the prior January. As used herein, the term “**CPI Index**” shall mean the Consumer Price Index for all Urban Consumers (CPI-U), All Items, in Denver-Aurora-Lakewood, CO (CBSA) [CUUSA433SA0], not seasonally adjusted, 1982-1984=100 reference base, as published by the U.S. Bureau of Labor Statistics (or if such index in its present form becomes unavailable, such similar index as may be agreed upon by the Parties). The Administrative Fee shall, so long as no Authority Default or condition exists or event has occurred (or has failed to occur) which, with the passage of time or the giving of notice or both would constitute an Authority Default (as defined in the CEA) has occurred and is continuing uncured under the terms of the CEA (any of the foregoing, a “**CEA Default**”), be excluded from the Remittance Account Pledge and shall be reconciled and withdrawn from the Remittance Account to pay the Authority monthly and will be reflected in the Annual Accountings (as hereinafter defined).

Section 2.03 Imposition of Charges. At all times during the Term of this Agreement, and as long as there is any outstanding balance due on the Credit Advance Loan (as hereinafter defined), if any third party, including parties that contract to use facilities within the Service Area for events, functions or other temporary purposes, or owners of new buildings within the Service Area or any buildings or functions occurring outside of the Service Area, receive services from the District Energy System (including any expansion thereof), the Authority shall use diligent efforts to allocate, charge to, and collect from such third parties a fair and equitable payment for such services and deposit such funds into the Remittance Account. Additionally, the Authority shall undertake diligent efforts to charge and collect payments for all services provided under the O&M Agreements; provided that any failure to collect any such payments shall not alter the City’s obligations with respect to the calculation or payment of any City Payment under this Agreement. The Authority shall not cause or permit to occur any physical expansion of the District Energy System to provide service to properties other than the Buildings within the original Service Area without obtaining the prior written approval of the City.

Section 2.04 Framework Agreement. The parties acknowledge and agree that, notwithstanding anything in the Framework Agreement to the contrary, the CEA Related Payments (including the City

Payments) (i) shall be made directly into the Remittance Account, (ii) do not constitute Authority Revenue or an Authority Fund for purposes of Article 13 of the Framework Agreement and (iii) are independent of, and will not be subject to, the payment waterfall set forth in Article 13 of the Framework Agreement.

ARTICLE III CITY PAYMENTS

Section 3.01 City Payments. As used in this Agreement, the term “**City Payments**” shall mean and refer collectively to any and all Annual Advances (as hereinafter defined) and any and all Supplemental Advances (as hereinafter defined).

Section 3.02 Annual Payments. On or before May 1 of each calendar year during the Term of this Agreement, the Authority shall prepare and submit to the City (in form and substance reasonably acceptable to the City) (1) a detailed accounting of all Authority Obligations anticipated under the CEA for the following calendar year, (2) all revenues anticipated under the O&M Agreements and from third party contracts for use of the District Energy System for the following calendar year, and (3) the Administrative Fee to be paid during such period of time (collectively the “**Annual Accounting**”). The Authority shall submit, with the Annual Accounting, a request for the City to fund any anticipated shortfall in the Authority Obligations under the CEA as identified in the Annual Accounting (a “**Funding Request**”). The City shall have the right to review and confirm all Annual Accountings and Funding Requests submitted by the Authority under this Agreement and the Authority will meet, respond to, and cooperate with the City in completing the review and confirmation process. On or before January 31 of the year following the year in which the Authority submitted a Funding Request in accordance with the terms set forth in this Section 3.02, the City shall, subject to the terms of Section 3.04, Article V, and Section 7.02 of this Agreement, submit an Appropriation Request (as hereinafter defined) for such advance in the amount set forth in such Funding Request pursuant to the terms of Article V, and, upon appropriation, advance such funds directly to the Remittance Account from legally available funds of the City (an “**Annual Advance**”). Any and all Annual Advances made by the City shall constitute disbursements under the Credit Advance Loan as set forth in Article IV of this Agreement.

Section 3.03 Unscheduled Payments. As used herein, the term “**Cost Adjustment Event**” shall mean (i) a shortfall in projected revenues from the amount reflected in the Annual Accounting or in any Updated Accounting or (ii) the occurrence of an event or circumstance that would give rise to a

material increase in the monetary obligations of the Authority under the CEA (including any Compensation Event, as defined in the CEA) from the amounts reflected in the corresponding Annual Accounting (a “**Cost Adjustment Event**”). The Authority shall provide written notice to the City of the occurrence of any Cost Adjustment Event within five (5) business days after the Authority becomes aware of the occurrence thereof, together with an update to the Annual Accounting for the then current year reflecting the impact of the Cost Adjustment Event (an “**Updated Accounting**”). The Authority shall submit, with the Updated Accounting, a request for the City to fund any anticipated shortfall in the Authority Obligations under the CEA as identified in the Updated Accounting (a “**Supplemental Funding Request**”). The City shall have the right to review and confirm any Updated Accounting and Supplemental Funding Requests submitted by the Authority under this Agreement and the Authority will meet, respond to, and cooperate with the City in completing the review and confirmation process. Within thirty (30) days after the Authority has submitted a Supplemental Funding Request in accordance with the terms set forth in this Section 3.03, the City shall, subject to the terms of Section 3.04, Article V, and Section 7.02 of this Agreement, submit an Appropriation Request for such advance in the amount set forth in such Supplemental Funding Request pursuant to the terms of Article V, and upon appropriation, advance such funds directly to the Remittance Account from legally available funds of the City (a “**Supplemental Advance**”). Any and all Supplemental Advances made by the City shall (i) be made directly from the City to the Remittance Account from legally available funds of the City and (ii) constitute disbursements under the Credit Advance Loan as set forth in Article IV of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the City shall, subject to Section 3.04 of this Agreement, submit an Appropriation Request for any payments due by the Authority under the CEA (less the amounts then held in the Remittance Account) pursuant to any termination of the CEA in connection with any event or circumstance covered by Article 20 of the CEA within (30) days after the date on which the Manager or City Representative receives written notice confirming that the Authority has a payment obligation pursuant to Article 20 of the CEA due to a termination of the CEA as to which there is no unresolved timely written objection by the Authority under the CEA (a “**Termination Funding Notice**”) and, upon appropriation, advance such funds directly to the Remittance Account from legally available funds of the City.

Section 3.04 Exclusion of Amounts Allocated to CSU. Notwithstanding any term or provision of this Agreement to the contrary, while the CSU O&M Agreement is in full force and effect, in no event shall

the City be obligated to make any City Payment to the Authority in respect of any amount that is Due and Payable (as defined below) by CSU to the Authority under the CSU O&M Agreement (the “**CSU Payment Amount**”). The City agrees that, at all times, the City Payment (together with all other CEA Related Payments and other funds held in the Remittance Account [not including the Administrative Fee] and all anticipated revenues as reflected in the then current Annual Accounting or Updated Accounting, as applicable) and the CSU Payment Amount must equal, in the aggregate, 100% of the Authority Obligations. As used herein, the term “**Due and Payable**” shall mean the then-due and established dollar amount which CSU is legally obligated to pay to the Authority under the CSU O&M Agreement as of the date of the City Payment after giving effect to any offset, deduction, withholding, forgiveness, credit, netting, abatement, or other adjustment under the CSU O&M Agreement as to which there is no unresolved timely written objection by CSU under the CSU O&M Agreement. The amount of the CSU Share shall be updated from time to time as the Authority rebalances connected energy loads for all buildings receiving service from the District Energy System. At all times during the Term of this Agreement, and as long as there is any outstanding balance due on the Credit Advance Loan, the Authority shall not amend or modify the CSU O&M Agreement in a manner that would result in a decrease in the CSU Share without the prior written consent of the City, which consent may be granted or withheld by the City in its sole and absolute discretion.

ARTICLE IV REIMBURSEMENT

Section 4.01 Credit Advance Loan. Each and every City Payment made to the Authority shall be considered a loan (collectively, the “**Credit Advance Loan**”). The Authority shall reimburse the City for the amount of all City Payments paid by the City pursuant to this Agreement, together with interest on the unpaid balance of such City Payments at the Interest Rate (as hereinafter defined) until paid. Any Credit Advance Loan made by the City shall be made pursuant to the terms of Section 14(c) of the Framework Agreement. As used herein, the term “**Individual Advance Loan**” shall mean and refer to each distinct disbursement or advance made by the City against the Credit Advance Loan under the terms of this Agreement in the amount and on the date noted on the Loan Grid (as hereinafter defined) and/or the Loan Documents (as hereinafter defined). The full outstanding principal amount of each Individual Advance Loan, together with all accrued and unpaid interest attributable to such Individual Advance Loan, shall be due and payable in full on that date which is the twentieth (20th) anniversary of the date on which the City Payment for such Individual Advance Loan is made by the

City to the Authority as reflected on the Loan Grid and/or the Loan Documents (the “**Individual Maturity Date**”); provided that the Authority shall have a one-time right to extend the Individual Maturity Date for each Individual Advance Loan for a period of five (5) additional years by delivering written notice of such extension to the City on or before that date which is one-hundred twenty (120) calendar days prior to the previously-established Individual Maturity Date for the corresponding Individual Advance Loan. As used herein, the term “**Interest Rate**” means the five (5) year US Treasury rate plus one percent (1%), calculated on the date of the City Payment and accrue with simple interest until repayment. Notwithstanding any term or provision of this Agreement to the contrary, the Credit Advance Loan shall at all times be subject and subordinate (as to payments and with respect to remedies) to all monetary obligations of the Authority arising under the CEA. Notwithstanding that the Authority may be in default in the payment of any principal or interest on or other amount with respect to the Credit Advance Loan when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise, or if any other default or event of default (howsoever styled) shall have occurred and be continuing under the Credit Advance Loan (a “**Credit Loan Default**”), for so long as any monetary obligations of the Authority under the CEA are outstanding (including Termination Compensation, collectively, the “**CEA Payment Obligations**”): (a) the obligations of the City under this Agreement shall not be affected or diminished by any such Credit Loan Default; (b) the Authority shall not, directly or indirectly, make any payment or distribution of principal or interest on account of or with respect to the Credit Advance Loan (i) from funds held in the Remittance Account, (ii) from funds otherwise constituting CEA Related Payments, (iii) at any time during the occurrence or continuation of a CEA Default, or (iv) at any time when the consequence of such a payment by the Authority will result in a breach by the Authority of its obligations under the CEA; (c) the City shall not demand or sue for any payment of principal or interest from the Authority on account of the Credit Advance Loan from the funds held in the Remittance Account or from any CEA Related Payments; (d) the City shall not commence or join with any other creditor or creditors of the Authority in commencing any bankruptcy, insolvency, reorganization, liquidation or receivership proceedings against the Authority which would have the effect of nullifying, reversing or disregarding the subordination of the Credit Advance Loan to the CEA Payment Obligations as provided for in this Section 4.01. The terms and conditions of the immediately preceding sentence shall survive until the termination of the CEA and indefeasible payment in full of all CEA Payment Obligations. If requested in writing by the Authority, the City shall execute a written

confirmation of such subordination in form and substance reasonably satisfactory to the Authority and the City.

Section 4.02 Loan Documents. The Credit Advance Loan will be memorialized and tracked by use of a grid in the form attached hereto as Exhibit A (the “**Loan Grid**”). Upon making an entry in the Loan Grid, the City shall promptly provide a revised Loan Grid to the Authority. The City reserves the right, in its sole and absolute discretion, to replace the Loan Grid with another format for documenting and evidencing the Credit Advance Loan, which could include a more traditional loan agreement, promissory note, and related documents (collectively, the “**Loan Documents**”). If the City elects to replace the Loan Grid, the City will draft the Loan Documents to be executed by the Authority. The Loan Documents will be consistent with the terms set forth in this Agreement.

ARTICLE V APPROPRIATION

Section 5.01 Appropriation. The City and the Authority acknowledge and agree that any and all City Payments shall constitute currently appropriated expenditures of the City. The City’s obligation with respect to the City Payments shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. Neither this Agreement nor the execution of the CEA shall obligate or compel the City to make City Payments beyond those appropriated in the City’s sole discretion. Notwithstanding the foregoing, the City hereby agrees that the City’s Office of Budget and Management (the “**BMO**”) shall seek an appropriation (each, an “**Appropriation Request**”) by the Denver City Council (the “**Council**”) after receiving a Funding Request, a Supplemental Funding Request or a Termination Funding Notice pursuant to terms set forth in Article III of this Agreement, it being the intent of the City hereunder that the decision to appropriate or not appropriate the City Payments from funds legally available to the City pursuant to this Agreement shall be made by the Council acting by ordinance without compulsion and solely in the City’s discretion. Notwithstanding anything to the contrary contained in this Agreement or the Framework Agreement, any failure by the Authority to pay the Credit Advance Loan shall not affect the City’s obligations hereunder. Except as specifically set forth in Article III (and Section 7.02) of this Agreement, no breach by the Authority of the terms of this Agreement shall excuse the BMO from submitting an Appropriation Request pursuant to the terms set forth herein.

ARTICLE VI
TERM

Section 6.01 Term. The Term of this Agreement (the “**Term**”) shall be coterminous with the term of the CEA, unless this Agreement is terminated by the City due to the occurrence of an Early Retirement Event described in Section 6.02 below.

Section 6.02 Early Retirement Event. As used herein, the term “**Early Retirement Event**” shall mean the achievement of any of the following circumstances:

- (a) The Authority receives an issuer rating of A-/A3/A-- from Standard & Poor’s, Moody’s, Fitch, or other nationally recognized rating agency approved by the City for a period of thirty-six (36) consecutive months (a “**Rating ERE**”) (the City may request the Authority to seek a rating at any time);

and either:

- (b) The audited annual financial reports for the Authority in each of three (3) consecutive years indicates net operational cash flow (OCF) for such period equal to or greater than 1.5 times the sum of the total annual monetary obligations of the Authority for each same three (3) consecutive year period (an “**OCF ERE**”);

or:

- (c) The audited annual financial reports for the Authority indicates a total net worth of an amount equal to the greater of (i) \$20,000,000 and (ii) an amount sufficient to cover all actual and contingent liabilities (including the termination payment under the CEA and any other concession agreement, project agreement or similar agreement) of the Authority (a “**Net Worth ERE**”).

In the event of the occurrence of either (i) a Rating ERE and (ii) an OCF ERE or a Net Worth ERE, the City shall have the right and option to terminate this Agreement by written notice given by the City to the Authority at any time after the applicable Early Retirement Event is achieved; provided that the notice from the City shall take effect on the date specified by the City no sooner than thirty (30) days after the date on which such notice is given. No termination of this Agreement by the City shall terminate, release, forgive, or otherwise alter the Credit Advance Loan as to any outstanding advances made by the City under this Agreement at the time of such termination. The City and the Authority

each hereby expressly agree that the Credit Advance Loan shall survive any such termination of this Agreement by the City under this Section 6.02.

ARTICLE VII MATTERS UNDER CEA

Section 7.01 Notices and Reports. At all times during the Term of this Agreement, and as long as there is any outstanding balance due on the Credit Advance Loan, the Authority shall, promptly upon receipt, provide to the City true and complete copies of all notices (including any notice received by EAS under Article 20 of the CEA and any Termination Funding Notice), financial reports, claims, and other material written work product such as letters, correspondence, studies, audits, reports, and similar items, given or received under or with respect to the CEA to the extent such items may cause, impact, or reflect a material change to the financial obligations of the Authority under the CEA.

Section 7.02 City Approvals. The City and the Authority hereby agree that (i) any Authority Changes described in Section 11.1.2 of the CEA, (ii) a Termination for Convenience by the Authority under the CEA, and (iii) any discretionary written amendment to the CEA that is not expressly provided for in the CEA (each of the events described in clauses (i)-(iii) above are referred to herein as a “**Discretionary Action**”) shall require prior consent or approval by the City. As an example and for clarification, any amendment to the CEA with respect to a Relief Event which is not triggered by an Authority Change would constitute a non-discretionary amendment and therefore not a Discretionary Action for purposes of this Agreement. At all times during the Term of this Agreement, and as long as there is any outstanding balance due on the Credit Advance Loan, the City shall have the right to approve of any and all Discretionary Actions advanced, proposed, or approved by the Authority and such approval by the City shall be an express condition precedent to the City’s obligation to submit any Appropriation Request or otherwise make any City Payment under this Agreement with regard to any obligation created by or as a result of the applicable Discretionary Action. With regard to all Discretionary Actions, the Authority shall (1) promptly notify the City of the requested approval and provide the City with all relevant supporting information and documentation, (2) advise and consult with the City prior to providing a response under the CEA, and (3) provide a response under the CEA in a manner consistent with the City’s direction.

Section 7.03 Additional Indebtedness. At all times during the Term of this Agreement, and as long as there is any outstanding balance due on the Credit Advance Loan, the Authority shall not enter into

any transaction involving borrowing or the issuance of indebtedness by the Authority without the prior written consent of the City, which consent may be granted or withheld by the City in its sole and absolute discretion.

Section 7.04 Ownership of the System. The CEA contemplates that, upon the expiration or termination of the CEA, legal ownership and title to all facilities and equipment constituting the District Energy System shall remain solely in the Authority. Notwithstanding any term or provision of the Master Lease to the contrary, if at the time of the expiration or termination of the CEA there is any outstanding balance due on the Credit Advance Loan, the City shall have the option to take ownership, operation, and/or title to all such facilities and equipment until such outstanding amounts are paid in full. The City may exercise such option by written notice given to the Authority at any time after the termination of the CEA and prior to the full reimbursement of the Credit Advance Loan.

ARTICLE VIII REAL ESTATE

Section 8.01 Grant. The City hereby licenses to the Authority the nonexclusive right to enter upon, use, occupy, and control all portions of the Service Area that are identified in the CEA as necessary for the construction, operation, and maintenance of the District Energy System (the “**CEA Real Estate**”) subject to the limitations, terms, and conditions contained in the Framework Agreement and Master Lease, and hereby confirms that the Authority shall have the right to sublicense to EAS and its contractors those nonexclusive rights in the CEA Real Estate as specified in the CEA.

Section 8.02 Master Lease. The City and the Authority hereby acknowledge and agree that (1) the Master Lease is in full force and effect, (2) by its terms, as of the Effective Date of this Agreement, the Master Lease has not been triggered as to some portion of the land that are contemplated to be included within the Master Lease premises, and (3) as and when those portions of the CEA Real Estate are incorporated into the Master Lease, such portions shall automatically be subject to the terms and conditions set forth in the Master Lease and the Master Lease shall be deemed to supersede, revoke, and replace the license set forth in Section 8.01 of this Agreement.

ARTICLE IX
ENVIRONMENTAL BENEFITS – GRANT

In consideration of the anticipated Environmental Benefits to be derived from the Project, the City shall provide to the Authority an irrevocable grant in the amount of One Million Dollars (\$1,000,000.00) to offset the cost of delivering the District Energy System and to support the Project (the “**City Grant**”). The City shall advance the City Grant upon the full execution of this Agreement and in conjunction with the consummation of the transactions contemplated in the CEA. The Authority shall cause the City Grant to be disbursed to the Collateral Agent (as defined in the CEA) pursuant to the terms of the CEA.

ARTICLE X
MISCELLANEOUS

Section 9.01 Records and Audits. Any authorized agent of the City, including the City Auditor or his or her representative, shall have the right to access, and the right to examine, copy and retain copies, at the City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Authority’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Authority shall cooperate with the City and grant City representatives access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement (and the Credit Advance Loan) or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Authority to make disclosures in violation of state or federal privacy laws. The Authority shall at all times comply with Revised Municipal Code of the City and County of Denver, Section 20-276.

Section 9.02 Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event, shall be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. This Agreement may be

modified, amended, changed or terminated, in whole or in part, without the Council's approval unless the Council's approval is required by the City Charter.

Section 9.03 Notices. All notices, certificates, or other communications given hereunder shall be deemed sufficiently given on the third day following the day on which the same have been mailed by first class, postage prepaid, addressed to the City and County and the Authority, at the address set forth for such party below. The City and the Authority, may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates, or other communications shall be sent.

If to the City: City and County of Denver
 Mayor
 1437 Bannock Street
 Denver, Colorado 80202

With copies to:

Manager of Finance
City and County of Denver
201 W. Colfax Avenue
Department 1010
Denver, Colorado 80202

And:

City Attorney
City and County of Denver
1437 Bannock Street
Suite 353
Denver, Colorado 80202

If to the Authority: _____

Section 9.04 Governing Law. This agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado and shall be subject to the limitations, if any, that are applicable under the Charter or ordinances of the City on the date hereof.

Section 9.05 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 9.06 Counterparts and Effective Date. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and

hereto were upon the same instrument. This Agreement shall become effective upon approval of the Council and upon all required signatures of the City and the Authority. As used herein, the term “**Effective Date**” shall mean the date appearing on the signature page of the City.

Section 9.07 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, if any amendment to this Agreement should be invalid, illegal or unenforceable in any respect, the validity and enforceability of the Agreement as in effect prior to such amendment shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have here unto set their hand and affix their seals at Denver, Colorado as of the day first above written.

INSERT SIGNATURE BLOCKS

EXHIBIT A

SCHEDULE OF CITY PAYMENTS AND REIMBURSEMENT PAYMENTS

[illegible]

Contract Control Number:
Contractor Name:

FINAN-202055116-00
NATIONAL WESTERN CENTER AUTHORITY

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-202055116-00
NATIONAL WESTERN CENTER AUTHORITY

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)