

STORMWATER FACILITY MAINTENANCE AGREEMENT

This Stormwater Maintenance Agreement is entered into this _____ day of _____, 2021, by and between the Board of County Commissioners of Arapahoe County, a political subdivision of the State of Colorado (the “County”), Modern Aviation Colorado Property, LLC (the Leasee) and Arapahoe County Public Airport Authority (the “Owner”), and collectively referred to as the “Parties.”

RECITALS

WHEREAS, the above-named property owner is the owner of a certain parcel of land known as A Tract of Land (Lot FBO 6) Located in SW1/4 of Section 36, T5S, R67W of the 6th P.M., County of Arapahoe, State of Colorado, a/k/a Modern Aviation Hangars and FBO Development, (hereinafter referred to as the “Property”); and

WHEREAS, the above-named Leasee leases the Property from the Owner; and

WHEREAS, a Phase III Drainage Report and Civil Construction Plans (“Plans”) for the Property have been approved by the County; and

WHEREAS, said Plans provide for stormwater management facilities including such facilities intended to reduce, detain, convey, and manage stormwater runoff, and provide water quality benefits (collectively referred to as “Facilities”); and

WHEREAS, the Facilities shown on the Plans shall be constructed and adequately maintained by the Leasee and the Owner in a manner that allows for the facilities to function in accordance with the approved Plans; and

WHEREAS, the County requires that the Leasee and the Owner submit an Operation and Maintenance Site Plan (“O&M Site Plan”) as specified in the Arapahoe County Stormwater Management Manual and attached hereto as “Exhibit A”; and

WHEREAS, Standard Operating Procedures, (“SOPs”) outlining maintenance requirements for Water Quality Facilities have been prepared and are referenced in Arapahoe County Stormwater Management Manual and hereby are incorporated herein by this reference; and

NOW, THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The Leasee or the Owner shall inspect and maintain the Facilities as described in the Plans and Exhibit A to ensure that such Facilities are and will remain in proper working condition in accordance with the Arapahoe County Stormwater Management Manual and other applicable legal requirements.

2. The maintenance of the Facilities shall be completed in accordance with the SOPs for the appropriate Facility and the Leasee or the Owner shall promptly perform all needed maintenance and repairs and shall document maintenance as outlined in the applicable SOP.
3. The Leasee and the Owner hereby grants, bargains and conveys to the County, officers, agents, and employees an easement over the Property for access from public rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that Leasee or Owner fails to do so and as necessary to ensure their proper working condition as outlined above.
4. In the event the Leasee and Owner fails to properly maintain the Facilities within thirty (30) days after written notice by the County of such deficiencies to the Leasee and Owner, the County, or its designated representative, may enter upon the Property and take whatever steps it deems necessary to maintain or repair the Facilities and bill the Leasee and Owner for the reasonable expense thereof, and who shall be responsible to reimburse the County for such expense. If the Leasee or Owner's failure to properly maintain the Facilities could cause damage to property, loss of life or a violation of a Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Permit, the County, or its designated representative, may take immediate action, without notice to the Leasee or Owner, to maintain or repair the Facilities. It is expressly understood and agreed that the County, or its designated representative, is under no obligation to maintain or repair the Facilities, and in no event shall this Agreement be considered to impose any such obligation on the County.
5. The Leasee and Owner agree that it will not at any time dedicate the Facilities to the public, to public use or to the County without the County's written consent, nor will it subdivide or convey the Property without a covenant providing that a proportionate share of the cost of maintenance and other costs associated with the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
6. In an event of emergency involving Facilities, the County, its officers, agents, and employees may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet the emergency. The County shall notify the Leasee and Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, the County may notify the Leasee and Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Leasee or Owner fail to respond, or should the Leasee or Owner inform the County that it intends not to respond within the specified period of time, the County, its officers, agents, and employees may enter immediately.
7. The County shall not pay and shall not be required to pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.
8. In the event the County, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or repair of the Facilities, including labor,

equipment, supplies and materials, the Lessee and/or Owner agrees to reimburse the County, or its designated representative, within thirty (30) days after the County gives the Lessee and Owner written notice of such expense. If the Lessee, Owner, or its successors or assigns fails to make timely payment as required herein, interest on such payment shall accrue at the rate of 1½ % per month until paid in full.

9. Any amount owed to County under the terms of this Agreement and not paid within thirty (30) days of the date of notification shall be the joint and several obligation of any owner of record of the Property or any portion thereof served by the Facilities and any successors in interest to such owner on the date such maintenance or repair was performed.
10. The Lessee, Owner, its successors, and assigns shall indemnify and hold harmless County, its officers, agents, and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County arising out of or resulting from the construction, presence, existence, maintenance, or use of the Facilities.
11. The Lessee or Owner shall notify the County when the Lessee or Owner transfers its interest in the Property or any portion thereof.
12. The responsibilities and obligations of the Owner shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Property of any portion thereof served by the Facilities.
13. The Lessee and Owner acknowledge that any approved final site plan and/or final plat shall include the Drainage Maintenance² Standard Note as specified in the Arapahoe County Land Development Code, the Development Application Manual, or other applicable County code, regulation, or duly adopted development policy. If the Facilities are not properly maintained, the County may provide necessary maintenance and assess the maintenance cost to the owner of the property. Failure to abide by the provision of such Note shall constitute a Zoning Violation, as defined in the Arapahoe County Land Development Code.
14. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.
15. In the event either of the Parties hereto files a law suit to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the County and Owner have executed this Agreement on the date set forth above.

OWNER: Arapahoe County Public Airport Authority

By: _____

Name: _____

Title: _____

State of Colorado }
 } s.s.
County of }

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

(SEAL)

Preliminary Web Documents

LEASEE: Modern Aviation Colorado Property, LLC

By: _____

Name: _____

Title: _____

State of Colorado }
 } s.s.
County of }

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

(SEAL)

For the Board of County Commissioners:

Bryan D. Weimer
Director, Department of Public Works and Development
Pursuant to Resolution No. 21-062