

FACILITIES FUNDING AND ACQUISITION AGREEMENT

THIS FACILITIES FUNDING AND ACQUISITION AGREEMENT ("Agreement") is made and entered into to be effective as of the 5th day of May, 2015, by and among **CONCORD METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), **IBC DENVER V, LLC**, a Colorado limited liability company ("IBC"), **TEAM TECHNOLOGIES, LLC**, a Delaware limited liability company ("Team"), and **VIAWEST, INC.**, a Colorado corporation ("ViaWest") (collectively, IBC, Team and ViaWest shall be referred to individually as a "Party" and collectively, as the "Parties").

RECITALS

WHEREAS, the Parties are the owners of certain property situate in Douglas County Industrial Park, Douglas County, Colorado, which property is being developed for commercial and industrial purposes (the "Property"); and

WHEREAS, in order to serve the access and water requirements of the Property, certain public infrastructure improvements may be acquired, constructed or installed including but not limited to water systems and street and safety protection improvements; and

WHEREAS, the District has committed in its service plan to construct or acquire the majority of certain public improvements and related real property interests which will benefit the Property and has provided such services to other areas within the district;

WHEREAS, the District has committed to reimburse the Parties up to \$295,000 for (i) the costs incurred in connection with the construction of a main water line between Lots 5 and 6 in Douglas County Industrial Park F1, County of Douglas, State of Colorado ("Water Line"); (ii) the costs related to the internal roadway constructed or to be constructed between Lots 5 and 6 in an east-west alignment from Peoria Street and related utility relocations ("Road"); and (iii) the costs incurred in connection with the storm sewer installation required at the connection to Compark ("Storm Sewer") (collectively, the Road, Water Line, and Storm Sewer are referred to as the "Improvements"); and

WHEREAS, the District has funds available for the acquisition and construction of the Improvements; and

WHEREAS, following the acquisition of the Improvements by the District, the District may convey the Water Line to the Arapahoe County Water & Wastewater Authority and the Storm Sewer to the South East Metro Storm Water Authority ("SEMWSA");

WHEREAS, in the event the Parties construct the Improvements and convey same to the District, the provisions of this Agreement shall apply; and

WHEREAS, the District has determined that for reasons of economic efficiency and timeliness it is in its best interests to establish a means by which the Parties will construct or

cause to have constructed by a general contractor ("Contractor") the Improvements which the District will acquire after they have been completed; and

WHEREAS, the District's service plan authorizes the issuance of general obligation bonds and the expenditure of District funds to pay for the construction and acquisition of the Improvements; and

WHEREAS, the Parties desire to set forth the procedures for the construction of the Improvements and reimbursement of the costs related to the Improvements.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties and the District contained herein, the Parties and the District agree as follows:

COVENANTS AND AGREEMENTS

1. Improvements. ViaWest has constructed approximately 240 feet of the Road east of Peoria Street and the Water Line ("Partial Construction") at a total cost of \$43,211 (\$24,254 for the Water Line and \$18,957 for a portion of the Road) (the "Partial Construction Costs"). The Partial Construction by ViaWest prior to the execution of this Agreement shall be eligible for acquisition by the District upon compliance with the requirements of Section 2(A) and (B). Thirty (30) days prior to commencing construction of any future Improvements, the Parties shall give notice to the District of their intent to construct the Improvements pursuant to the provisions of Section 2 of this Agreement.

2. Construction of Improvements. Provided the Parties agree to construct any future Improvements, the Parties shall design, construct, and complete the Improvements in full conformance with the design standards and specifications as established and in use by Douglas County, Colorado (the "County"), Arapahoe County Water & Wastewater Authority, SEMSWA and the District, and if applicable, approved by a professional engineer licensed in the State of Colorado and designated by the District Board to review the Improvements ("District Engineer"). Notwithstanding anything to the contrary contained in this Agreement, the Parties shall be under no obligation to construct the Improvements.

A. Procedure.

(1) Construction Contract Requirements. Any construction contract for any portion of the Improvements shall require the Contractor to provide a one (1) year warranty from the date of substantial completion on the completed Improvements and if requested by the District, a security mechanism in form reasonably approved by the District, to secure the warranty.

(2) Verification of Improvement Costs. A Party seeking reimbursement from the District shall provide documentation evidencing the actual costs for construction of the Road, Storm Sewer and/or Water Line, along with lien waivers, warranties¹,

and as built drawings. One of the three following procedures shall be used to verify the costs of the Improvements:

(a) Prior to awarding a construction contract for any Improvements, the Parties shall obtain a minimum of three (3) written bids for the Improvements. The Parties shall provide the District with copies of all bids received for the Improvements. In the event the Parties determine that the lowest bidder is not the bidder selected on a contract, the Parties shall provide documentation justifying the use of the contractor selected to the District; or

(b) Prior to requesting that the District acquire any Improvements pursuant to this Agreement, the Parties shall obtain a certification of an independent engineer that the costs for the design, construction and completion of the Improvements are reasonable and comparable for similar projects as constructed in the Denver Metropolitan Area; and

(c) The Improvements shall be publicly bid in accordance with the statutory requirements for public improvements, and all rules and regulations appurtenant thereto.

B. Improvements Acquisition. Subject to the appropriation of funding pursuant to Section 4 herein, the District agrees to make payment to the Parties for all costs related to the Improvements, including but not limited to, all costs of design, testing, engineering, construction, and related consultant fees up to a maximum amount of \$295,000 (the "Funds"). The District shall acquire the Improvements during their warranty period, after preliminary acceptance by the appropriate entity, and prior to final acceptance, upon receipt by the District of the following:

(1) As-built drawings for the Improvements to be conveyed to the District;

(2) Lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, in a form reasonably acceptable to the District;

(3) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form) approved by the District Engineer, canceled checks and any other requested documentation to verify the amount requested;

(4) An executed Bill of Sale or Dedication Certificate conveying the Improvementsⁱⁱ to the District, in substantially the form attached hereto as **Exhibit A** and incorporated herein by this reference, and

(5) Execution of appropriate easements for the Improvements and appurtenances, if not otherwise required to be dedicated to the County, SEMSWA the Arapahoe County Water & Sanitation District, or an association of property owners.

C. Dedication of Improvements. Improvements shall be dedicated to the appropriate entities after the District has received the Bill of Sale or Dedication Certificate for same. Upon dedication, the District or grantee parties shall assume repair, replacement and maintenance responsibility for the Improvements.

D. Reimbursement Between Parties. The Parties agree that: (i) Thirteen and Eight Tenths percent (13.8%) of the Funds shall be allocated to reimbursement of the Water Line; (ii) Seventy One and Two Tenths percent (71.2%) of the Funds shall be allocated to reimbursement of the Road; (iii) Seven and One Half percent (7.5%) shall be allocated to reimbursement of the Storm Sewer; and (iv) Seven and One Half percent (7.5%) shall be allocated as a contingency fund. The Parties further agree the Partial Construction constitutes One Hundred percent (100%) of the Water Line and Eighteen and Fourteen Hundreds percent (18.14%) of the Road in the total amount of \$43,211 and the actual costs of the Water Line were less than the estimated amount. Except with respect to the Partial Construction Costs for the Partial Construction, the amount of reimbursement to be paid to each Party shall be based upon the amount of lineal feet of Improvements constructed. For example, if ten percent (10%) of the Water Line is constructed by a Party, such Party will be limited to reimbursement equal to the lesser of: (i) 10% of the amount available for reimbursement of the Water Line; or (ii) the actual costs of construction not to exceed the amount available in Funds.

3. RESERVED

4. Funding. The Parties agree that no payment shall be required of the District for Improvements constructed and/or acquired under Section 2 hereof until the District has legally available and appropriated funds in an amount sufficient to acquire all or a portion of the completed Improvements. The District agrees to exercise reasonable efforts to acquire the Improvements from the Parties when the Improvements are complete. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse the Parties hereunder, but this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by the District in its absolute discretion.

A. Financial Capability of District. The financial plan attached to the service plan demonstrates the ability of the District to issue bonds and collect property tax revenues to repay bonds issued for the purpose of acquiring the Improvements and for reimbursing the Parties.

5. Representations. Each Party hereby represents and warrants to and for the benefit of the District:

A. That it has the full power and legal authority to enter into this Agreement;

B. Neither the execution and delivery of this Agreement nor the compliance with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which the Party is a party or is or may be bound; and

C. The Party has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

These representations and warranties are made as of the date hereof and shall be deemed continually made by the Parties to District for the entire term of this Agreement.

6. Term. The term of this Agreement shall extend from the date hereof through and including December 31, 2025, unless terminated earlier by the mutual written agreement of the Parties.

7. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, via facsimile with a hard copy immediately following thereafter by United States mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Concord Metropolitan District
 Bob Blodgett, District Manager
 8390 E. Crescent Parkway, Ste 500
 Greenwood Village, CO 80111
 Bob.Blodgett@claconnect.com
 303-265-7916

With a copy to:
Spencer Fane Britt & Browne LLP.
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Attn: Russ Dykstra
Phone: (303) 839-3800
Fax: (303) 839-3838

To ViaWest ViaWest, Inc.
6400 S. Fiddler's Green Circle
Suite 2000
Greenwood Village, CO 80111
Attn: Joseph A. Guerriero
Phone: 720-891-2524

To IBC: IBC Denver V, LLC
1101 West 48th Avenue, Suite 100
Denver, CO 80221
Attn: Brian C. Mott
Phone: (303) 674-1300
Fax: (303) 674-5660

To Team: Team Technologies, LLC
525 Junction Road
Madison, WI 53717
Attn: Vice President,
Mission Critical Facilities
Phone: (612) 395-8970

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties and the District shall have the right from time to time to change its address.

8. Assignment. The Parties shall not assign any of the rights nor delegate any of the duties hereunder to any person or entity without having first obtained the prior written consent of the District, which may approve or reject such assignment in its sole and absolute discretion, except that no consent of the District shall be required in the event the Parties seek to assign this Agreement to a direct corporate affiliate. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

9. Default/Remedies. In the event of a breach or default of this Agreement by either party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

10. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado, and any proceedings shall take place in the County and not elsewhere.

11. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12. Integration. This Agreement constitutes the entire agreement among the Parties and the District with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

13. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District, Team, IBC and ViaWest any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District, IBC, Team, and ViaWest shall be for the sole and exclusive benefit of the parties.

14. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

16. Conditions Precedent. The performance by the Parties of their obligations set forth herein shall constitute conditions precedent to the performance of the obligations of the District as set forth herein.

17. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

18. Relocation of Easements. If necessary, the Parties and the District shall cooperate to relocate any easements which underlie the land the Improvements are situated on. The amendments to such easements shall be in form and substance reasonably acceptable to the respective parties and executed at the time of the execution of the Bill of Sale.

IN WITNESS WHEREOF, the Parties and the District have executed this Facilities Funding and Acquisition Agreement as of the day and year first set forth above.

"IBC" ^{DENVER, CO.}
IBC Holdings, LLC, a Colorado limited liability
company

By: [Signature]

Its: MANAGER

"ViaWest"
ViaWest, Inc., a Colorado corporation

By: _____

Its: _____

"Team"
Team Technologies, LLC, a Delaware limited
liability company

By: [Signature]

Its: Vice President

"District"
CONCORD METROPOLITAN DISTRICT, a
quasi-municipal corporation and political
subdivision of the State of Colorado

By: [Signature]
Acting President

Attest:

[Signature]
Acting Secretary

“IBC”

IBC Holdings, LLC, a Colorado limited liability company

By: _____

Its: _____

“ViaWest”

ViaWest, Inc., a Colorado corporation

By:  _____

Its: Joseph A. Guirardone
SVP - General Counsel

“Team”

Team Technologies, LLC, a Delaware limited liability company

By: _____

Its: _____

“District”

CONCORD METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

President

Attest:

Secretary



EXHIBIT A

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that _____, hereinafter referred to as "Grantor," for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, paid by the _____ District, hereinafter referred to as the "District," a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is _____, organized and existing under the laws of the State of Colorado, County of _____, has bargained and sold, and by these presents, does grant and convey unto the District, its successors and assigns, all of its right, title and interest in the improvements as shown on Exhibit A attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto the District, its successors and assigns forever; and Grantor, its successors and assigns, shall warrant and defend the sale of said improvements, as shown on Exhibit A made unto the District, its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the property, improvements, services and facilities to the District, its successors or assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Grantor, by and through its authorized representatives, hereby executes this Bill of Sale and sets it seal as of this ____ day of _____, 20__.

GRANTOR

STATE OF COLORADO)
) ss.
COUNTY OF)

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

Witness my hand and official seal.

My commission expires: _____

Notary Public