



BOARD OF SUPERVISORS AGENDA ITEM REPORT  
AWARDS / CONTRACTS / GRANTS

Award  Contract  Grant

Requested Board Meeting Date: 01/24/2023

\* = Mandatory, information must be provided

or Procurement Director Award:

**\*Contractor/Vendor Name/Grantor (DBA):**

WorldView Enterprises, Inc.

**\*Project Title/Description:**

Operating Agreement for the Operation and Administration of Spaceport Tucson.

**\*Purpose:**

Related to the recently approved lease agreement with WorldView Enterprises, Inc., this item defines the Owner-Operator relationship between Pima County and World View Enterprises, Inc. for continued operation and maintenance of the publicly available Spaceport Tucson facility. No costs will be incurred and no revenue will be collected by Pima County relative to the Operating Agreement.

**\*Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

**\*Program Goals/Predicted Outcomes:**

As part of ongoing operation and maintenance of the publicly available Spaceport Tucson facility, this agreement authorizes World View Enterprises, Inc. to continue to operate and maintain the facility on behalf of Pima County.

**\*Public Benefit:**

Safe operation and continued maintenance of the publicly available Spaceport Tucson facility.

**\*Metrics Available to Measure Performance:**

The agreement between Pima County and WorldView Enterprises, Inc. sets terms for the safe operation and continued maintenance of Spaceport Tucson; the launching of high-altitude balloons for various commercial applications by WorldView Enterprises, Inc.; and making the Spaceport Tucson facility publicly available to other users on a fair and nondiscriminatory basis.

**\*Retroactive:**

Yes. Effect January 1, 2023, contemporaneously with the lease-purchase agreement between Pima County and WorldView Enterprises, Inc. approved by the Board of Supervisors on January 10, 2023.

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

Contract / Award Information

Document Type: CTN Department Code: RPS Contract Number (i.e., 15-123): 23\*0111
Commencement Date: 01/01/2023 Termination Date: 12/31/2043 Prior Contract Number (Synergen/CMS):
Expense Amount \$ Revenue Amount: \$ 0.00

\*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

\*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:
Match Amount: \$ Revenue Amount: \$

\*All Funding Source(s) required:

\*Match funding from General Fund? Yes No If Yes \$ %

\*Match funding from other sources? Yes No If Yes \$ %

\*Funding Source:

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Jeffrey Teplitsky

Department: Real Property Services

Telephone: 520-724-6306

Department Director Signature: Date: 1/19/2023
Deputy County Administrator Signature: Date: 1/19/2023
County Administrator Signature: Date: 1/19/2023

**PIMA COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT**

**PROJECT:** Operating Agreement for Spaceport Tucson

**OPERATOR:** World View Enterprises, Inc.  
1840 E. Valencia Rd., Bldg 8, Ste. 123  
Tucson, AZ 85706

**CONTRACT NO.:** CTN-RPS-23\*0111

**OPERATING AGREEMENT FOR THE OPERATION AND ADMINISTRATION OF SPACEPORT TUCSON**

This Operating Agreement for the Operation and Administration of Spaceport Tucson ("**Operating Agreement**") is made and entered into by and between Pima County, a political subdivision of the State of Arizona ("**County**"), and World View Enterprises, Inc., a Delaware corporation ("**Operator**"), to commence on January 1, 2023, and effective as of January 24, 2023 (the "Effective Date").

**1. Background and Purpose.**

- 1.1. County is the owner of the real property described and depicted in **Exhibit A ("Spaceport Parcel")**. The Space Port Parcel has a publicly available launch pad for the launching of high-altitude balloons ("**Spaceport Tucson**" or "**Spaceport**"). Operator is a near-space exploration company that uses proprietary high-altitude balloon technology to lift people and scientific payloads up to twenty miles above the earth for purposes of space tourism, scientific research, and other commercial applications.
- 1.2. The Spaceport Parcel is adjacent to an improved 11.96 acre parcel (the "**Building Parcel**"). On January 10, 2023, the parties entered into an agreement (the "**Lease-Purchase Agreement**") to lease the Building Parcel to Operator.
- 1.3. In exchange for Operator's maintenance and operation of Spaceport Tucson, Operator may utilize Spaceport Tucson on a non-exclusive basis.
- 1.4. Operator is aware of the proximity of Spaceport Tucson to both Tucson International Airport and Davis-Monthan Air Force Base. Operator has determined that Spaceport Tucson can safely be operated at that location in compliance with all FAA and all other applicable governmental laws and regulations.
- 1.5. The Pima County Board of Supervisors (the "**Board**") has authority under A.R.S. § 11-254.04 to engage in any "activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county," including specifically the "acquisition, improvement, leasing or conveyance of real or personal property." The Board has determined that Operator's operations, and hence this Operating Agreement, will have a significant positive impact on the economic welfare of Pima County, Arizona's inhabitants in retaining high-paying jobs well above the minimum wage within Pima County, based on Operator's anticipated employment and salary levels.
- 1.6. County has the authority, under A.R.S. § 28-8411, to operate airports.

- 1.7. Under a prior agreement, Operator operated and maintained Spaceport Tucson for the use of Pima County's businesses, inhabitants, and tourists since 2016. The Space Port Operating Agreement ("Original Agreement") was effective January 19, 2016, and the Parties terminated the Original Agreement on January 1, 2023. Parties have since operated as if this Agreement has remained in full force and effect.
- 1.8. The Parties now wish to enter into a new Operating Agreement for Spaceport Tucson.
2. **Original Agreement.** As of the Effective Date, this Operating Agreement will supersede and replace the Original Agreement in its entirety.
3. **Term.** This Operating Agreement will be for a term of 20 years (the "Term") commencing on January 1, 2023. As the commencement date is before the Effective Date of this Operating Agreement, the parties will, for all purposes, deem the Operating Agreement to have been in effect as of the Commencement Date. If the Lease-Purchase Agreement is, for any reason, terminated prior to the expiration of the Term this Operating Agreement will also terminate at the same time.
4. **Operation of Spaceport.** Operator will, during the Term, operate and maintain Spaceport Tucson as a publicly available limited use aviation and spaceport facility on behalf of the County at its own expense, as provided in this Operating Agreement. Operator will utilize a portion of its leased facility as part of the public Spaceport. This includes a lobby area, restrooms, and parking area, which will be available to users of the public Spaceport.
  - 4.1. Permitted Uses; Third-Party Users. Spaceport Tucson is a limited-use public aviation facility that is suited primarily for launching of high-altitude balloons and associated payloads and related purposes. Additional non-launch-related research, testing and certification activities may also be suitable, provided they are aerospace or aeronautical in nature, are permitted by applicable laws and regulations, and do not create waste or nuisance pursuant to section 4.7 of this Operating Agreement. All uses must respect public safety. Operator has the right to refuse to allow any use that Operator reasonably determines is incompatible with the nature of the facility and its existing uses, violates licenses, violates regulations, or is unsafe.
  - 4.2. Licensing. Operator will obtain and maintain throughout the term any necessary FAA permits or approvals for the launching of high-altitude balloons at the Spaceport. Operator will comply with all requirements and restrictions associated with all such licenses and permits, and with all representations made by Operator in its license and permit applications. Operator will use its best effort to obtain or maintain a launch-site operator license for operation of the Spaceport as a launch site under 14 C.F.R. Part 420. Upon termination or expiration of this Operating Agreement, Operator will cooperate with County and with any new operator in the process of obtaining FAA approval to transfer the license to the new operator.
  - 4.3. Spaceport Users; No Exclusive Rights. Operator will make Spaceport Tucson publicly available to users for the permitted uses as described in Section 4.1 on a fair and nondiscriminatory basis. Operator may use Spaceport Tucson on the same basis as other users. This Operating Agreement does not confer on Operator any proprietary, property, or exclusive rights to the Spaceport.
  - 4.4. Fees. Operator may charge other users a fee based on a reasonable apportionment of operating costs incurred by Operator under this Operating Agreement, including, without limitation, maintenance and repair expenses, insurance expenses, utility expenses and casualty costs. All fees collected for use of the Spaceport must be utilized by Operator for operation and maintenance of the Spaceport. Operator will annually report to County the amount of fees collected and how they were expended pursuant to Section 18 below.

4.5. Laws and Regulations. Operator will comply in all material respects and will use commercially reasonable efforts to ensure that other Spaceport Tucson users comply in all material respects, with all government laws and regulations applicable to use and operation of Spaceport Tucson. Operator will not commit or allow to be committed any waste or other nuisance on the Spaceport. Operator must obtain any necessary FAA and Air Traffic Control approvals for its activities on the Spaceport and must use commercially reasonable efforts to ensure that any other user has obtained any such necessary approvals. Operator must coordinate the activities on the Spaceport Tucson with the Tucson Airport Authority.

4.6. Industry Standards. Operator will operate the Spaceport Tucson in compliance with relevant aerospace-industry standards, especially those regarding safety.

4.7. Hazardous Materials Prohibited Operator may not cause or knowingly permit any Hazardous Materials to be brought upon, kept, or used in or about Spaceport Tucson by Operator, its agents, employees, contractors, or invitees, without the prior written consent of County, other than such Hazardous Materials that are necessary or useful to Operator's business and will be used, kept, stored and disposed of in a manner that complies with all laws regulating any such materials or substances. Operator's operations at Spaceport Tucson must comply with all applicable provisions of environmental laws and regulations, including but not limited to the Resource Conservation and Recovery Act (RCRA) (40 U.S.C. 260 et seq. and Arizona Revised Statutes, Title 49, Chapter 4), and the Clean Air Act (42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3). As used in this Operating Agreement, the term "Hazardous Material" means any toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous substance, material or waste that is, or during the Term becomes, regulated under any applicable local, state, or federal law or regulation, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto).

4.8. Hazardous Materials Indemnification. County represents and warrants to Operator that, as of the Commencement Date, and except as may be disclosed in that that certain Expanded Phase I Environmental Site Assessment for Raytheon Buffer Zone – Auriga Properties, Prepared by EEC for County Project 309025.11, dated 3/27/2012, it has no actual knowledge of the presence of any Hazardous Materials on, under or about the Spaceport. County will indemnify, defend (by in-house counsel or by other counsel acceptable to Operator), and hold Operator, and each of Operator's directors, officers, employees, agents, and shareholders, harmless, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorneys' fees, consultant fees, and expert fees) (collectively, "Claims"), arising from or caused in whole or in part, directly or indirectly, (a) by County's breach of its representation in this Section 4.8, and (b) Claims resulting from the presence of Hazardous Material on, under or about the Spaceport after the Commencement Date unless resulting from Operator's breach of Section 4.7 and any and all costs of any investigation, repair, remedial planning, cleanup, detoxification, or decontamination of the Spaceport (including, without limitation, the soil and ground water on or under the Spaceport), that is required by a regulatory authority or court of competent jurisdiction. County may, at its own cost, challenge any such order. County's obligations extend only to any condition that existed in, on, under, about or from the Spaceport prior to the Commencement Date (including aggravation of any such condition), of which County had actual knowledge and that it did not disclose as provided in this Paragraph. County's obligations under this Section 4.8 will survive the expiration or termination of this Operating Agreement. "Actual knowledge" of County, for purposes of this paragraph, means the actual knowledge of the County Administrator, any Deputy County Administrator, or any County department head, and any fact that is readily ascertainable by review of files related to County's acquisition and use of the Spaceport, which are accessible to those individuals on the Effective Date of this Operating Agreement.

4.9. Utilities. Operator will pay before delinquent all charges for all utilities used for operation of the Spaceport.

4.10. Repair and Maintenance. Operator will, at its own expense, maintain, repair and, when necessary, replace, every part of the Spaceport, and will keep it in good order, condition and repair, reasonable wear and tear excepted, and in a clean, sanitary and safe condition, in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction.

4.11. Damage from Casualty. If any part of the Spaceport is damaged or destroyed by any cause whatsoever (other than the negligent or willful acts or omissions of County), during the Term of this Operating Agreement, Operator will, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and Operator's obligations under this Operating Agreement will not terminate; *except that*, (a) if such damage or destruction is due to County's negligent or willful acts or omissions, Operator will have no obligation to repair or replace the Spaceport, Operator may terminate this Operating Agreement upon sixty (60) days' notice to County, and Operator will have no obligation to pay any insurance proceeds to County; (b) if Operator maintained the insurance required by Section 12 of this Operating Agreement at the time of such destruction and despite Operator's commercially reasonable efforts, such insurance proceeds are unavailable or are insufficient to rebuild the Spaceport in a manner reasonably acceptable to County and Operator, Operator may terminate this Operating Agreement upon sixty (60) days' notice to County and Operator will, at its sole cost and expense, clean and clear the site of all debris, repair the site and install landscaping so that the Spaceport blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to County; (c) if the Spaceport is substantially destroyed by fire or other casualty at any time during the last five (5) years of the Term, then Operator may terminate this Operating Agreement by written notice given to County within sixty (60) days after the date of such destruction, and Operator will be discharged from responsibility to repair the damage, but Operator will, in that event, at Operator's sole cost and expense, clean and clear the site of all debris, repair the site and install landscaping so that the Spaceport blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to the County; and (d) if the damage is caused by a third-party user of the Spaceport, Operator will promptly seek to recover the cost of repair from that user and need not undertake the repair until the user has provided appropriate financial assurances of payment.

4.12. Inspections by County. County reserves the right to enter the Spaceport to inspect its condition and observe the activities conducted on it, provided that, except in case of emergency, (a) County will give Operator at least twenty-four (24) hours advance written notice, (b) County representatives must be accompanied by a representative of Operator at all times, (c) County representatives must comply with the any safety rules & regulations, (d) all County representatives and agents entering the Spaceport must be citizens of the United States, and (e) Operator may temporarily restrict the viewing of any activity or equipment, whether Operator's or another user's, that is proprietary and confidential or that must be kept confidential under an agreement with the United States or other governmental authority. County will use reasonable efforts to not interrupt activities at the Spaceport. County may, in the event of an emergency, use any means necessary to open gates or doors in order to obtain entry to the Spaceport, without liability to Operator except for damage caused by a failure of County to exercise reasonable care for Operator's property, subject to federal law.

5. **Authorization to Operate Spaceport.** In consideration of the mutual promises and covenants set forth in this Operating Agreement, County grants Operator the exclusive right to operate the Spaceport. Operator agrees that it will—at its own expense and for the benefit and recreation of County's inhabitants, tourists, and visitors—operate, manage, repair and maintain, promote, improve, and develop the Spaceport under and subject to the terms of this Operating Agreement.

6. **Indemnity.** To the fullest extent permitted by law, Operator will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Operator or any of Operator's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Operator to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. County will, in all instances, except for Claims arising solely from the acts or omissions of County, be indemnified by Operator from and against any and all Claims. Operator is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

7. **Insurance.** Operator will maintain at its expense such insurance coverage for its operations as County may determine from time to time during the term of the Operating Agreement, including commercial general liability, auto liability, and workers' compensation. Operator shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below, which may be included in the policies that Operator is required to carry under the Lease-Purchase Agreement with respect to the Building Parcel. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect Operator from liabilities that arise out of the performance of this contract. If necessary, Operator may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

7.1. Commercial General Liability Coverage. Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury and property damage, broad form contractual liability, personal and advertising injury and products- completed operations.

7.2. Business Auto Liability. Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident.

7.3. Workers Compensation (WC) and Employers' Liability – Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage - \$1,000,000 each accident and each person – disease.

7.4. Property Insurance. Operator will obtain and keep in force during the entire Term a policy of insurance covering loss or damage to the Premises and the County-Provided FF&E in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special-extended perils (all risk) and will deliver to County a Certificate of Property insurance, with County named as additional insured. Said Certificate must be satisfactory to County.

7.5. Additional Insurance Requirements.

7.5.1. Claims-Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Operator must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

7.5.2. These policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

7.5.2.1. Additional Insured. The General Liability and Business Automobile Liability Policies shall be indorsed to include Pima County, its departments, its districts, boards, commissions, officer, official, agents, and employees as additional insureds with respect to liability arising out of the activities performed by on or behalf of Operator.

7.5.2.2. Subrogation. The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Operator.

7.5.2.3. Primary Insurance. Operator's policies shall stipulate that the insurance afforded Operator shall be primary, and that any insurance carried by County, its agents, officials, or employees shall be excess and not contributory insurance.

7.5.3. Insurance provided by Operator shall not limit Operator's liability assumed under the indemnification provisions of the contract. Operator will provide County with current certificates of insurance annually. All certificates of insurance must provide for guaranteed thirty (30) days written notice to County of cancellation or non-renewal.

7.5.4. Policy Conditions. The commercial general liability insurance coverage required above must be on an occurrence basis, and must cover personal injury, bodily injury (including wrongful death) and property damage, operations hazard, Additional Insured Endorsements, contractual liability (including Operator's indemnification obligations required under this Operating Agreement), and products and completed operations liability.

7.6. Financial Responsibility Requirements under Federal Regulations. Operator's insurance coverage must also comply with all insurance requirements imposed by any FAA regulation, permit or license to which Operator is subject, including specifically the conditions of coverage set forth in 14 CFR § 440.13.

7.7. County as Additional Insured; Certificates. All policies, both liability and property, must name County as an additional insured, and the insurance must be primary insurance and non-contributory with respect to all other available sources. Operator will provide County with current certificates of insurance annually. All certificates of insurance must provide for guaranteed thirty (30) days written notice to the County of cancellation or non-renewal.

7.8. Insurer. The insurance required under this Operating Agreement must be obtained from companies duly licensed to transact business in the state of Arizona, which maintain a "General Policyholders Rating" of at least A-VII, as set forth in the most current issue of "Best's Insurance Guide."

7.9. Users' Insurance. Operator will, before allowing any other individual or entity to utilize the Spaceport, obtain proof that the user has in place liability coverage at the levels at least as broad as those set forth above, which have been endorsed to name Operator and County as additional insureds.

8. **Default/Termination**. Either party may present written notice of default or non-performance to the other party.

8.1. Operator Default. The occurrence of any one or more of the following events constitutes a default and breach of this Operating Agreement by Operator for which County may terminate this Operating Agreement (each an "**Event of Default**"):

8.1.1. Default of Lease-Purchase Agreement. Any default beyond any applicable cure period of the Lease-Purchase Agreement entered into contemporaneously with this Operating Agreement.



8.1.2. Insurance. The failure by Operator to maintain insurance policies as set forth above for any period of time, in which event Operator must immediately cease all operations at the Spaceport until such insurance is obtained, provided that the failure to maintain insurance will not be a default and breach of this Operating Agreement so long as Operator ceases all operations and thereafter procures such insurance within thirty (30) days of the termination or cancellation of the applicable policy. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Operator will, within 5 days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage.

8.1.3. Violation of Law. Operator's material violation of any law applicable to the Spaceport or Operator's operation or occupancy thereof, or the conduct of any unlawful activities on the Spaceport that are knowingly permitted by Operator, either tacitly or explicitly, or that Operator has not taken commercially reasonable means to prevent after Operator becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted, where such violation or conduct continues for more than thirty (30) days after written notice from County.

8.1.4. Other Covenants. The failure by Operator to observe or perform any other covenant, condition or provision of this Operating Agreement to be observed or performed by Operator, where such failure continues for a period of 30 days after written notice of the failure by County, provided, however, that if the nature of Operator's default is such that more than 30 days are reasonably required for its cure, then Operator will not be in default if Operator commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

8.2. County Default. Failure by County to comply with its obligations under this Operating Agreement, within 30 days after County's receipt of written notice from Operator detailing the nature of the obligation, will constitute an Event of Default by County, except that if the nature of County's default is such that more than 30 days are reasonably required for its cure, then County will not be in default if County commences the cure within 30 days and thereafter diligently prosecutes the cure to completion.

## 9. Remedies.

9.1. All Remedies Available. Except as expressly provided elsewhere in this Operating Agreement, either party may pursue any remedies provided by law or in equity following an Event of Default, including termination, injunction, specific performance and damages. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy.

9.2. No Consequential Damages. Notwithstanding anything to the contrary in this Operating Agreement, neither County nor Operator will be liable to the other for any consequential, special, or indirect damages (in each case, regardless of whether such damages are foreseeable).

9.3. Cure by County. If Operator fails to perform in a timely manner any of its obligations under this Operating Agreement following any applicable notice and cure periods County may (but is not obligated to) perform those obligations and charge Operator for the costs, together with interest at the statutory rate for interest on judgments, from the date the expense was incurred until it is paid by Operator.

9.4. Cure by Operator. If County fails to perform in a timely manner any of its obligations under this Operating Agreement following any applicable notice and cure period, Operator may (but is not obligated to) perform those obligations and offset rent coming due under the Lease-Purchase Agreement by the reasonable out-of-pocket amount incurred by Operator in undertaking such performance.

10. **Notices.** Except as otherwise specifically provided, all notices to be given under this Operating Agreement must be in writing and be either served personally or sent by certified or registered mail, return receipt requested, to the parties at the addresses indicated below or to such other persons or addressees as either party may designate in writing to the other party:

**If to County:**

Pima County Administrator  
115 N. Church Avenue  
Tucson, Arizona 85701, Suite 231  
Attn: Jan Leshner  
Email: [Jan.Leshner@pima.gov](mailto:Jan.Leshner@pima.gov)

With copies to:

Pima County Attorney's Office  
32 North Stone Avenue, Suite 2100  
Tucson, Arizona 85701  
Attn: Chief Civil Deputy Attorney  
Email: [Sam.Brown@pcao.pima.gov](mailto:Sam.Brown@pcao.pima.gov)

Pima County Economic Development  
201 N. Stone Ave., 2<sup>nd</sup> Floor  
Tucson, AZ 85701  
Attn: Heath S. Vescovi-Chiordi  
Email: [Heath.Vescovi-Chiordi@pima.gov](mailto:Heath.Vescovi-Chiordi@pima.gov)

**If to Operator:**

World View Enterprises, Inc.  
1840 E. Valencia Rd., Bldg 8, Ste. 123  
Tucson, AZ 85706  
Attn: Chief Executive Officer  
[rhartman@worldview.space](mailto:rhartman@worldview.space)

With a copy to:

Cooley LLP  
10265 Science Center Drive  
San Diego, CA 92121  
Attn: David L. Crawford

11. **Assignment.** Except as expressly provided below, Operator does not have the right to assign its rights or obligations under this Operating Agreement, in whole or in part, without the prior written consent of the County. County will not unreasonably withhold, condition, or delay its consent to a proposed assignment, but Operator acknowledges that it is reasonable for County to do so if, in County's reasonable business judgment, the intended assignee has not demonstrated that it has the financial and operational capacity to perform all of Operator's obligations under this Operating Agreement. No consent by County to an assignment will release Operator from any of its obligations under this Operating Agreement. Notwithstanding the foregoing, Operator may without County's prior consent, but upon not less than fifteen (15) days prior written notice to County, (1) to assign this Operating Agreement to any entity controlling, controlled by or having fifty percent (50%) or more common control with Operator, or resulting from a merger or consolidation with Operator or acquiring all of the assets and/or stock of Operator; provided that any such entity assumes all obligations under this Operating Agreement.
12. **Cancellation for Conflict of Interest.** This Operating Agreement may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated in this Operating Agreement by this reference.
13. **Non-Discrimination.** Operator will comply with applicable local, state and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; with the Americans with Disabilities Act, to the extent applicable to Operator's operation and the Premises; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Operating Agreement.

14. **Non-Appropriation.** County's performance of its obligations under this Operating Agreement may be dependent upon the appropriation of funds by the Board of Supervisors of the County, or the availability of funding from other sources. Should the Board fail to appropriate the necessary funds, or if funding becomes otherwise not legally available to the County prior to the Commencement Date for the purpose of fulfilling County's obligations under this Operating Agreement, County will be relieved of that obligation and Operator may terminate this Operating Agreement.
15. **Choice of Law.** The laws of the State of Arizona apply to any action relating to this Operating Agreement and any court action must be brought in a court in Pima County, Arizona.
16. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any term of this Operating Agreement to be performed by the other party, or to take any action permitted as a result of that failure, will not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time does not constitute an accord and satisfaction.
17. **Authorization.** County and Operator each warrant to the other that the individuals executing this Operating Agreement on behalf of that party are duly authorized to do so.
18. **Accounting Records; Audits; Annual Unaudited Financial Reports, Budget.**
  - 18.1. Accounting Records. In connection with the operation of the Spaceport, Operator will keep and maintain accounting records consistent with generally accepted accounting principles (GAAP). Such records shall be open for inspection and audit by duly authorized representatives of County at all reasonable times.
  - 18.2. Annual Unaudited Financial Reports. In addition to any required audited statements, Operator must give the County Administrator or his designee a year-end balance sheet and a year-end statement of income and expenses prepared in accordance with generally accepted accounting principles. The financial statements must be delivered by June 30 each year and must show all revenues from operation of the Spaceport and all expenses incurred in connection with the operation of the Spaceport for the previous fiscal year. Operator will cause any other organization that utilizes the Spaceport on an annual basis to give County an annual financial report within one hundred twenty (120) days after the end of the user's fiscal year end.
  - 18.3. Additional Audits. At any time upon written notice to Operator, County may, for cause, require Operator to provide a program-specific or financial audit ("For-Cause Audit") within 120 days of request. County's written notice will specify the period to be covered by the audit, the type of audit required, and the time for completion and submission of the audit. All audits provided under this section must be performed by a qualified independent accounting firm. Such audits must include any response Operator wishes to make concerning any audit findings. A For-Cause Audit is one based upon a reasonably specific concern, complaint, or allegation discovered by, or made to, County.
19. **Compliance with Laws.** Operator may not use the Spaceport, or permit anything to be done in, on, or about the Spaceport, that in any way conflicts with any federal, state, or local law, statute, ordinance, or governmental rule or regulation.
20. **Liens.** Operator will keep the Spaceport free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Operator.

21. **Third Party Contract.** Operator may not contract with a third party to conduct the Permitted Activities without County's prior written consent, which will be at County's sole discretion. County's consent to a third party contract will not relieve Operator of any of its obligations, responsibilities, or liabilities under this Operating Agreement.
22. **Alterations and Improvements to Spaceport.** Either Party may, with the written consent of the other, which consent may not be unreasonably withheld, conditioned or delayed, make physical improvements, alterations, additions, or changes to the Spaceport (collectively, "**Alterations**"), as provided below.
- 22.1. **Procedure for Obtaining Approval.** A Party that wishes to make an Alteration (the "**Contracting Party**") must provide the other Party (the "**Reviewing Party**") with written notice of the proposed Alterations (an "**Alterations Notice**"). The Alterations Notice must include plans and specifications for the Alterations ("**Alteration Plans**") developed by an Arizona registered architect or engineer. The Reviewing Party will have forty-five (45) days after receipt of an Alterations Notice to approve or reject the proposed Alterations. Failure to respond to an Alterations Request within forty-five (45) days will be deemed approval.
- 22.2. **Reasons for Disapproval.** The Reviewing Party will not unreasonably withhold consent to proposed Alterations. Without limitation, however, it is reasonable for the Reviewing Party to withhold consent for Alterations that would:
- 22.2.1. adversely affect the integrity of any structural, mechanical, or electrical system within any portion of the Spaceport;
- 22.2.2. result in the Reviewing Party being required to perform any work that could otherwise be avoided or deferred;
- 22.2.3. result in an increase in the premiums for any hazard or liability insurance carried by the Reviewing Party, result in an increased risk of liability, or pose a safety hazard;
- 22.2.4. result in an increase in the demand for utilities or services (including wastewater treatment) that are provided by the Reviewing Party to the Spaceport;
- 22.3. **No Liability for Approval of Alterations.** The Reviewing Party's review of the Alteration Plans will be solely for that Party's purposes and will not imply that that Party has reviewed the Alteration Plans for quality, design integrity, legal compliance, or other substantive matters. Contracting Party will be responsible for any omissions or errors in the Alteration Plans. The Reviewing Party's review will be solely to determine that the proposed Alterations are consistent with the public purposes of this Agreement.
- 22.4. **Construction of Alterations.** The Contracting Party will cause an approved Alteration to be constructed in a good and workmanlike manner, to be completed promptly, and to use new materials.
- 22.4.1. *Compliance with Law.* All Alterations, whether permanent or temporary, must comply with all applicable federal, state, and local statutes, codes, ordinances, rules, and regulations. The Contracting Party will obtain all necessary permits from regulatory agencies, including, but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshal.
- 22.4.2. *Contractor Indemnification.* Every construction contract must include the contractor's agreement to indemnify and defend both Parties from and against any and all liability,

damages, and expenses of any kind or nature suffered or incurred by the Party as a result, in whole or in part, of any negligent or willfully wrongful acts or omissions of the contractor.

- 22.4.3. *Contractor Insurance.* Every construction contract must require said contractors to obtain insurance coverage of a type and amount acceptable to the Parties and to name both Parties as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements, the Contracting Party Operator must deliver to County a complete and reproducible set of as-built plans.
- 22.4.4. *Interference with Project.* Operator will not unreasonably interfere with County's construction of an approved Alteration, and the County will not, in the course of construction, unreasonably interfere with Operator's operation of the Spaceport.
- 22.5. **Property of County.** Once installed, Alterations are part of the Spaceport, owned by County and maintained and repaired by Operator as provided in this Operating Agreement.
23. **Operator not Agent of County.** Operator will exercise day-to-day control of activities on the Spaceport, and County will not control those activities. Operator's officers, employees, and agents are not employees of or otherwise under the control of County, nor are they entitled to receive any employment related compensation or fringe benefits under the Pima County Merit System.
24. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed by the other party or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.
25. **Americans With Disabilities Act.** Operator will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
26. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Operator engages in for-profit activity and has 10 or more employees, Operator certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Operator becomes aware during the term of the Contract that the Operator is not in compliance with A.R.S. § 35-394, Operator must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
27. **Force Majeure.** A party's nonperformance of an obligation under this Operating Agreement is excused for the time period, and to the extent, that the performance is prevented or delayed by strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, or any other cause beyond the reasonable control of that party, except Operator's obligations to pay rent or other monetary sums due under the Lease-Purchase Agreement (collectively, the "Force Majeure").
28. **Amendment.** This Operating Agreement may not be amended except by a written instrument duly executed by both parties.

29. **Authorization.** County and Operator each warrant to the other that the individuals executing this Operating Agreement on behalf of that party are duly authorized to do so.
30. **Entire Agreement.** Except as otherwise provided, this Operating Agreement, together with its exhibit, constitutes the entire agreement between County and Operator with respect to the Spaceport.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day, month, and year written below.

**COUNTY:**

**Pima County**, a political subdivision of the State of Arizona

**OPERATOR:**

**World View Enterprises, Inc.**, a Delaware corporation

\_\_\_\_\_  
Adelita Grijalva  
Chair, Board of Supervisors

  
\_\_\_\_\_  
Ryan M Hartman  
Chief Executive Officer

Date \_\_\_\_\_

Date 18 January 2023

**ATTEST:**


\_\_\_\_\_  
Melissa Manriquez  
Clerk of the Board of Supervisors

Date \_\_\_\_\_

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Heath Vescovi-Chiordi  
Director of Economic Development

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kyle Johnson  
Deputy County Attorney



3528 N. FLOWING WELLS RD  
TUCSON, ARIZONA 85705  
TEL: 520-322-6400  
FAX: 520-322-6401

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**PARCEL 1**  
January 12, 2016

That portion of the Northeast quarter of Section 31, Township 15 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the Northeast corner of said Section 31, said corner being a 2-1/4 inch steel capped pipe in concrete marked "T15S, 30, 29, 31, 32, R14E", from which the East one-quarter corner of said Section 31 bears South 00°13'54" East, 2670.77 feet distant, said corner being a 1-1/2 inch aluminum cap marked "1/4, 31, 32";

Thence South 00°13'54" East 473.52 feet upon the East line of the Northeast quarter of said Section 31 to the **Point of Beginning**;

Thence continue South 00°13'54" East 1292.54 feet upon said East line;

Thence South 89°46'06" West 822.92 feet;

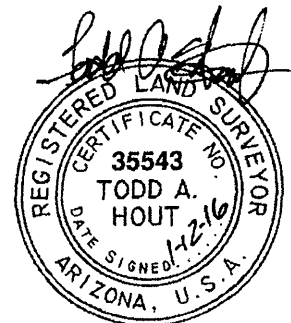
Thence North 00°13'54" West 474.84 feet to the Southeast right-of-way line of South Access Road per Book 26 at Page 13 of Road Maps, Sequence No. 20140980052, Pima County Records;

Thence North 47°26'07" East 1003.92 feet upon said Southeast right-of-way line;

Thence North 42°33'53" West 50.00 feet upon said Southeast right-of-way line;

Thence North 47°26'07" East 139.20 feet upon said Southeast right-of-way line to the beginning of a curve, turning to the left, concave to the Northwest, with a radius of 431.00 feet;

Thence Northeasterly upon said curve, upon said Southeast right-of-way line, through a delta angle of 2°06'47" and an arc length of 15.90 feet to the **Point of Beginning**.



EXPIRES 12-31-18



PIMA COUNTY GEODETIC POINT (IV05)  
FND. 2-1/4" STEEL CAPPED PIPE IN  
CONC. MKD. "T15S, 30,29,31,32, R14E"  
(NE. COR. SEC. 31)

S 00°13'54" E  
473.52'

POINT OF  
BEGINNING

SCALE: 1"=200'

N 42°33'53" W  
50.00'

N 47°26'07" E  
139.20'

**SOUTH ACCESS ROAD (PUBLIC)**  
BK 26, PG 13 RM SEQ. NO. 20140980052

N 47°26'07" E 1003.92'

S 00°13'54" E 1292.54'  
S 00°13'54" E 2670.77'

PROPOSED PARCEL 1  
705,815.8 SF  
16.20 ACRES

N 00°13'54" W 474.84'

EXISTING 60' ACCESS, UTILITY &  
INCIDENTAL PURPOSES EASEMENT  
PER DKT. 13506, PG. 1892

S 89°46'06" W 822.92'

### DEPICTION OF EXHIBIT "A"

PARCEL 1 BOUNDARY  
NE 1/4 SECTION 31  
TOWNSHIP 15 SOUTH, RANGE 14 EAST  
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA  
DATE: 01/12/16 - DRAWN BY: JPH

PIMA COUNTY  
GEODETIC POINT  
(IX05) FND. 1-1/2" ACP  
MKD. "1/4, 31,32"  
(E. 1/4 COR. SEC. 31)



2102 N COUNTRY CLUB RD, BLDG 9  
TUCSON, ARIZONA 85716  
(520) 561-4983