

## GROUND LEASE AGREEMENT

**THIS GROUND LEASE AGREEMENT (“Lease”)** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a political subdivision of the State of Colorado, by and through its Department of Aviation which operates Denver International Airport (“**DEN**” or “**Landlord**”), and **OAK LEAF SOLAR XXVI LLC**, a Colorado limited liability company (“**Tenant**”), effective as of the Effective Date stated on the Basic Lease Terms Summary attached as **Exhibit A**.

**WHEREAS**, the City owns and operates Denver International Airport (“**Airport**”) and Tenant desires to obtain certain rights, services, and privileges in connection with the use of certain Airport property; and

**WHEREAS**, the City has determined that in the exercise of its lawful functions, and to serve better the Airport's public use, it is desirable and appropriate that a photovoltaic power system (the “**System**”) be developed, constructed, equipped, and operated on Airport land, and that such use is compatible and appropriate within the uses allowed for Airport land, in order to put the same to full, productive use and for the benefit of the Airport (the “**Intended Use**”);

**NOW THEREFORE**, in consideration of the amounts to be paid to Landlord by Tenant and the other mutual covenants promises and covenants set forth herein, the receipt and sufficiency of which is hereby conclusively established, Landlord and Tenant hereby agree as follows:

**1. BASIC LEASE TERMS SUMMARY.** References in the body of this Lease to the Basic Lease Terms Summary attached to this Lease as **Exhibit A** shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Basic Lease Terms Summary. References in the Basic Lease Terms Summary to a portion of the body of this Lease (*e.g.*, Section references in the left-hand column of the Basic Lease Terms Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Lease. Notwithstanding anything set forth above, if there is any inconsistency between the Basic Lease Terms Summary and another portion of this Lease, the terms of the Basic Lease Terms Summary shall control.

**2. INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS, AND ADDENDA.** The Basic Lease Terms Summary and the Exhibits and Addenda attached to this Lease are incorporated into this Lease by reference.

**3. CONDITIONS PRECEDENT TO EFFECTIVENESS OF LEASE.** The Parties agree that acknowledgement of no objection from the Federal Aviation Administration (“**FAA**”) of the plans for the System, and any other required FAA or other regulatory approvals, shall be a condition precedent to commencing the Term.

#### 4. LEASED PREMISES.

- A. Landlord hereby agrees to lease the “**Premises**” (as defined in Section 4.B below) to Tenant, and Tenant hereby agrees to lease the Premises from Landlord, upon the terms and subject to the conditions set forth in this Lease. Landlord grants to Tenant the right to construct upon, occupy, and use the System on the Premises consistent with and subject to all of the terms and provisions of this Lease. The rights and privileges granted herein are subject to prior easements, rights of way, and other matters affecting title to the Premises. The Premises is expressly subject to an aviation easement hereby reserved to the City and the Airport for the flight of aircraft over the Premises.
- B. The “Premises” as used herein shall be an area comprised of the “**Land**” (such area to be determined in accordance with this Section 4). Landlord acknowledges and agrees that the exact size, shape and location of the area of the Land that will comprise the Premises (the “**Lease Boundary Line**”) has not yet been determined, and any maps or depictions which Tenant has shown or will show to Landlord (including, without limitation, **Exhibit B** attached hereto) are approximations only and are subject to change by agreement of Tenant and Landlord. During the Diligence Period (as defined below), Tenant shall assess the Land to determine the most suitable location for the System, and Tenant and Landlord shall establish the final Lease Boundary Line in accordance with Section 4.C below. Until the final Lease Boundary Line is established, any reference to the Premises herein shall be deemed to include the entirety of the Land.
- C. Within thirty (30) days following the “**Construction Commencement Date**” (as defined in Section 6.A below), Tenant shall obtain and deliver to Landlord an ALTA survey (the “**Survey**”), which shall set forth and conclusively establish (1) the metes and bounds legal description of the Lease Boundary Line, and (2) the net acreage (the “**Acreage**”, and each such acre, an “Acre”) of the Premises, being the total Acreage located within the Lease Boundary Line. The parties agree that (A) the Lease Boundary Line and Acreage set forth in the Survey shall be incorporated into this Lease as if fully set forth herein without amendment to this Lease, and (B) the Acreage set forth in the Survey shall be the Acreage used for purposes of computing Rent. Landlord acknowledges and agrees that that the final Acreage of the Premises as established by the Survey may be less than the approximate acreage of the Land set forth in the Basic Lease Terms Summary, which would have the effect of reducing the Rent payable under this Lease, but in no circumstances will the Acreage for the purposes of computing the rent be less than ten acres. If requested by Tenant, Landlord shall provide written consent to the foregoing or an amendment to this Lease expressly incorporating the Survey into this Lease.

## **5. DILIGENCE PERIOD.**

- A. The “**Initial Diligence Period**” shall commence on the Effective Date. Within thirty (30) days after the Effective Date, Tenant shall pay to Landlord the “**Initial Diligence Period Fee.**” Landlord and Tenant acknowledge and agree that the Initial Diligence Period Fee (and the Extended Diligence Period Fees, if applicable) have been bargained for and agreed to as consideration for the Diligence Period (as defined below), Tenant’s right to terminate this Lease pursuant to Section 5.E, and for Landlord’s execution and delivery of this Lease. Such consideration is in addition to and independent of all other consideration provided in this Lease, and is nonrefundable in all events. This Section 5.A shall survive termination of the Lease.
- B. Tenant may elect to extend the Initial Diligence Period by the Extended Diligence Periods by providing written notice to Landlord prior to the expiration of the Initial Diligence Period (or the preceding Extended Diligence Period, as applicable), and paying to Landlord the applicable Extended Diligence Period Fee within thirty (30) days after the expiration of the Initial Diligence Period (or the preceding Extended Diligence Period, as applicable). If Tenant does not elect to exercise the Extended Diligence Period, the applicable Extended Diligence Period Fee shall not be payable to Landlord. If Tenant has exercised the Extended Diligence Period and the Rent Commencement Date (as defined in Section 7) occurs prior to the end of such Extended Diligence Period, any unamortized portion of the applicable Extended Diligence Period Fee shall be applied against the initial Rent payment. The Initial Diligence Period and the Extended Diligence Periods, if exercised, shall be collectively referred to as the “Diligence Period.”
- C. During the Diligence Period, Tenant (and its agents, representatives, consultants and affiliates) shall be permitted access to the Premises at reasonable times and upon reasonable notice to Landlord, for purposes of conducting, at Tenant's expense, any and all investigations or testing of the Premises as Tenant may deem necessary, appropriate or convenient, including without limitation, the surveying or investigation of environmental, soils, biological, cultural, historical, boundary or geotechnical matters. Tenant is hereby authorized to undertake direct discussions and/or negotiations with any governmental entity or other agency, body, or organization that has jurisdiction over the Premises (including, without limitation, any city, county state or federal agency) in regards to the Premises and the Intended Use. Tenant agrees to make available to Landlord copies of any surveys or studies related to the Premises that are undertaken by Tenant during the Diligence Period.
- D. Landlord acknowledges that Tenant may obtain, at Tenant's expense, a title insurance policy insuring Tenant's leasehold interest in the Premises. Landlord agrees to reasonably assist Tenant in obtaining such title policy by supplying any information reasonably requested by the title insurance company in connection with issuing such title policy.
- E. During the Diligence Period, Tenant may terminate the Lease, for any reason or no reason, exercisable upon written notice from Tenant to Landlord of its election to terminate delivered on or before the expiration of the Diligence Period (as may be

extended pursuant to this agreement), in which event Landlord and Tenant shall have no further rights or obligations under this Lease except as otherwise expressly provided in this Lease.

## **6. LEASE TERM.**

- A. The Term shall commence on the date that Tenant begins construction of the System on the Premises as confirmed by written notice from Tenant to Landlord (the “**Construction Commencement Date**”) and shall continue for the entire Term unless modified or earlier terminated pursuant to the terms hereof. If the Term does not commence on the first day of a month, then the Term shall not end until the last day of the last month of the Term.
- B. Tenant shall have the right to terminate this Lease as to all or any part of the Premises as follows:
- (i) as of the last day of the one hundred eighty-sixth (186th) month of the Term (the “**Interim Termination Deadline**”), exercisable upon written notice to Landlord given prior to the Interim Termination Deadline;
  - (ii) pursuant to the failure of any condition described in 6.C below; or
  - (iii) after the expiration of the Diligence Period but prior to the construction and commercial operation of the System, upon Tenant’s determination, in Tenant’s sole and absolute discretion, that it would not be commercially reasonable to proceed with the construction and operation of the System; provided, that if Tenant so terminates pursuant to this clause (iii) after the occurrence of the Rent Commencement Date, then such termination shall be effective as of the date that Tenant pays to Landlord a termination fee equal to the unpaid balance of the total Rent that would otherwise be due for the first twelve months following the Rent Commencement Date. If this Lease is terminated as to only a portion of the Premises, this Lease shall remain in effect as to the remainder of the Premises.
- C. Tenant's obligation to pay Rent and continue this Lease is at all times expressly subject to satisfaction of each of the following conditions:
- (i) Tenant’s obtaining and maintaining all necessary or required approvals from state, federal and local authorities;
  - (ii) Tenant's obtaining and maintaining any agreement that is necessary for the operation of the System and the sale and delivery of the electricity generated by it, including without limitation an interconnection agreement and power purchase agreement with the applicable utility company; and
  - (iii) Tenant’s ability to continuously operate the System and utilize the Premises for the Intended Use.

If any of the foregoing conditions are not satisfied at any time following the Effective Date, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

D. The City reserves the right to terminate this Lease for the purpose of implementing any master plan for development or expansion of the Airport or an Airport facility. In the event the CEO of DEN determines that the City requires use of the property for aviation purposes during the Term, and such aviation purposes require termination of the lease, the City shall have the right to terminate this Lease upon six (6) months prior written notice to Tenant. In such instance when the City requires termination of the Lease for airport purposes, the City shall be responsible for reasonable costs of system removal and payment of the "Termination Value" in Exhibit C.

**7. RENT COMMENCEMENT.** Tenant's obligation to pay Rent shall commence on the earlier of: (i) the expiration of the Diligence Period (as may be extended pursuant to Section 3(b) above) or (ii) the Construction Commencement Date (the earlier of such dates, the "**Rent Commencement Date**"). For the avoidance of doubt, the Construction Commencement Date shall not be deemed to have occurred as a result of (and the Rent Commencement Date shall not be triggered by): (1) Tenant's due diligence activities on the Premises (including, without limitation, any surveying, soil or environmental testing or similar work) or (2) any work performed by or on behalf of the servicing utility company. Upon the occurrence of the Rent Commencement Date, Tenant shall send a written notice to Landlord confirming the occurrence of the Rent Commencement Date. Construction Commencement Date shall be determined as the arrival on site of civil grading or pier installation equipment.

**8. RENT; PAYMENT SCHEDULE; RENT ESCALATION.**

- A. Rent shall be payable in advance in semi-annual installments due on each January 15 and July 15 during the Term (each, a "**Rent Payment Date**"); provided, that the first installment of Rent shall be due on the Rent Commencement Date and shall be prorated, on a daily basis, for the period between the Rent Commencement Date and the first Rent Payment Date. If Tenant elects to terminate this Lease prior to the Rent Commencement Date in accordance with the terms of this Lease, no Rent shall be due or payable.
- B. Beginning on the Rent Escalation Date, and for each anniversary thereafter, the annual Rent shall increase over the annual Rent payable for the immediately preceding year by the Rent Escalation Percentage.
- C. If any overdue installment of rent is not received by Landlord within ten (10) days after Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord in the amount of five percent (5%) of the unpaid delinquent rent amount, and Tenant shall pay interest of 1.5% per month on the unpaid balance due from the date of Landlord's notice until the principle and the interest is paid in full. If the Rent Commencement Date occurs prior to the establishment of the Lease Boundary Line pursuant to Section 2 above, then the Rent payable on and after the Rent Commencement Date until the date that the Lease Boundary Line is established (such period, the "Interim Rent Period") shall be computed based on the approximate acreage of the Land set forth in the Basic Lease Terms Summary above. Once the Lease Boundary Line is established, the Rent payable on and after such date shall be computed based on the final Acreage (a minimum of 10 acres) set forth in the Survey, (and the Rent shall be increased or decreased accordingly). If the Rent is

increased as a result of an increase in the final Acreage as set forth in the Survey, Tenant shall make a one-time payment to Landlord on the next Rent Payment Date equal to the difference between (i) the amount of Rent which would have been payable during the Interim Rent Period if computed based on the final Acreage set forth in the Survey, minus (ii) the amount of Rent actually paid during the Interim Rent Period. If the Rent is decreased as a result of a decrease in the final Acreage as set forth in the Survey, Tenant shall deduct from the next Rent payment owing to Landlord an amount equal to the difference between (i) the amount of Rent actually paid during the Interim Rent Period, minus (ii) the amount of Rent which would have been payable during the Interim Rent Period if computed based on the final Acreage set forth in the Survey.

D. **REESTABLISHMENT OF RENTALS, FEES AND CHARGES.** The City, through the CEO of DEN, may from time to time, at intervals of not more than five (5) years nor less than one (1) year from the previous change, at the CEO's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges provided for herein. The City agrees that such right shall not be exercised prior to an effective date which is the fifth anniversary of the Commencement Date, and such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system.

- (i) If the CEO proposes any such change in the schedule of rentals, fees and charges, the City will give notice thereof to Tenant not less than ninety (90) days before the same is to become effective. Should the proposed changes result in an increase of more than Five Percent (5%) in the dollar amount of compensation paid by Tenant for the prior calendar year, then Tenant may decline to pay compensation at the new rate(s). Tenant shall promptly (but in no event less than thirty (30) days prior to the proposed effective date of such schedule of rentals, fees and charges) advise the CEO of its intention to cancel and terminate this Lease. Upon such notice of intent to cancel and terminate, Tenant shall remove its property from the Premises and surrender the Premises upon a date specified by the CEO but in no event more than one hundred twenty (120) days after the Tenant's notice of intent to cancel. In no event shall the rate increase go into effect if Tenant has timely delivered its intent to cancel and terminate this Lease. Should Tenant fail to give timely notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation as promulgated by the CEO. No failure by the City to reestablish the rentals, fees, and charges at a five year interval date shall constitute a waiver of the City's right to reestablish the rentals, fees, and charges at any time thereafter.

**9. UTILITIES; MAINTENANCE.** During the Term, (a) Tenant shall arrange and pay for all public utility services used on the Premises by Tenant, and (b) Tenant shall be responsible for the repair and maintenance of the entire Premises, including any portion of the Premises located outside of the proposed fenced area.

**10. CROPS.** Prior to the Rent Commencement Date, Landlord may plant farm crops or enter into a lease for the planting of farm crops on the Premises so long as any such lease

does not have a term longer than the 2017 growing season, and that the Premises is available for construction of the system by January 2018. Tenant shall have the right to enter onto the Premises to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses on the Premises as Tenant deems necessary, useful or appropriate during the period prior to January 1, 2018, if there is farming on the premises. If any portion of the Property is subject to any conservation program (*i.e.* CRP) as of the Effective Date, Landlord shall provide Company with a copy of such program contract, together with all amendments and modifications thereto. If it becomes necessary to release or remove all or portions of the Property from such program to allow installation of Project facilities, the Landlord shall immediately cause such release or removal upon written request from the Company. Owner shall first attempt to secure any exemptions for Solar Operations allowed by the program). Any CRP termination penalties will be paid by Landlord.

**11. TENANT'S PROPERTY.** The System and its constituent parts, together with any and all improvements or other features constructed on, or personal property installed or placed on the Premises by or for Tenant, including without limitation, machinery, fixtures, trade fixtures, equipment, racking, inverters, cables, solar panels, and other personal property (collectively, "**Tenant's Property**") are personal property within the meaning of Article 9 of the Uniform Commercial Code ("**UCC**") regardless of the manner of attachment to the Premises. Tenant's Property is and shall at all times during the Term be deemed to be the property of Tenant (subject to any Transfer in accordance with this agreement), to be removed at Tenant's expense upon the expiration or earlier termination of the Term. The creation, attachment and perfection of security interests in Tenant's Property shall be governed exclusively by Article 9 of the UCC. For the avoidance of doubt and without limiting the foregoing, Landlord hereby waives all rights to levy, distraint, possession or landlord's lien against Tenant's Property, if any, and shall not cause the creation of, or attachment to, Tenant's Property of any liens (including mechanics' and judgment liens) or other encumbrances. For the avoidance of doubt, Landlord is not responsible for payment of any Taxes assessed on Tenant's Property.

**12. USE AND OCCUPANCY.**

- A. Tenant shall use the Premises for the Intended Use (including all lawful uses that are incidental to, or not inconsistent with the Intended Use) and/or any other related use. The Premises shall be utilized for no other purposes, unless otherwise authorized in writing by the CEO of Landlord. It is understood that the use of Premises is restricted by (1) the zoning code designation of Airport property by the City, (2) the Intergovernmental Agreement ("**IGA**") dated April 21, 1988, between the City and Adams County, as amended, (3) FAA requirements, and (4) by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipal agency having jurisdiction over the Premises. The current zoning code designation of the Premises allows energy production.
- B. Tenant shall regularly clean up any litter or refuse deposited on the Premises by Tenant.
- C. Tenant shall keep the Premises maintained in grass vegetation and shall work to mitigate any noxious weeds present on the Premises per the requirements of the county in which the

Premises lie. Tenant shall maintain the Premises with regards to ground vegetation, including mowing and weed control according to state and local law.

- D. Tenant shall prohibit its employees and contractors from hunting on the Premises, or bringing on the Premises any domestic animals, firearms, or alcohol, or driving at excessive speeds on Aviation property.
- E. Tenant shall construct and maintain a security fence around the entire perimeter of the Acreage per the specifications of the county or other jurisdictional authority.

### **13. CONSTRUCTION AND INSTALLATION OF SYSTEM.**

- A. Tenant shall, at its sole cost, construct and install the System in full compliance with approved plans and specifications as hereinafter provided.
- B. The plans and specifications shall be separately submitted to the City's Building Inspection Division for consolidated review by the Building Inspection and Fire Department.
- C. All improvements shall conform with applicable statutes, FAA approval requirements, ordinances, building codes, regulations, DEN Development Guidelines, DEN Environmental Guidelines, and other general requirements of the Airport or the City. Approval given by the City shall not constitute a representation or warranty as to such conformity, nor does the City warrant the suitability of the site for the Tenant's operations; responsibility therefor shall at all times remain with Tenant.

### **14. COORDINATION OF CONSTRUCTION.**

- A. Tenant shall cooperate with the City and its planners, designers, architects, and engineers in the construction and installation of the System on the Premises and comply with the approved plans and specifications of the Building Code, and to the extent applicable the DEN Development Guidelines. Because the project will not be interconnecting behind the DIA meter and thus not exposed to the DEN electrical system, the project will not be subject to the DEN Design Standards for electrical engineering. Tenant recognizes that during its Construction Period construction may also occur in adjacent areas surrounding its Lease Premises, and Tenant agrees to monitor construction in adjacent areas and coordinate the work of its contractors with the construction, scheduling and construction staging occurring in adjacent areas.
- B. Tenant shall prevent activities associated with the construction or installation of the System from interfering with travelers, other businesses or Airport operations, and such activities may be required to be accomplished during off hours, in whole or in part, requiring overtime payments to workers.
- C. Tenant shall be responsible for all utilities needed during construction.



- D. Tenant or its contractor shall at all times keep the construction site and surrounding area in a clean, orderly and safe condition free of accumulated construction debris and waste materials, and shall be responsible for removal of all construction debris and waste materials to a suitable licensed landfill off DEN property.
- E. All construction work, materials, and installations involved in or incidental to the construction on the Lease Premises shall be subject at all times to inspection and approval by the City. The City shall at all times have the right of access to the Lease Premises to monitor and inspect construction.
- F. The City shall have the right to halt construction or deny access to the Premises at any time if such construction is at material variance from the approved plans and specifications until such material variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such material variance or impediment to the safe operation of the Airport so as to permit continuation of construction as expeditiously as possible.

## **15. ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION.**

In the performance of construction activities for the Tenant Improvements or Site Improvements, Tenant is responsible for insuring that it or its contractor complies with all federal, state and local environmental requirements including without limitation the requirements of **Exhibit D** attached hereto and the following:

- A. **Environmental Control.** Tenant shall comply with the requirements under Denver International Airport Technical Specifications Section for Environmental Controls and Temporary Erosion and Sedimentation Control.
- B. **Air Pollution.** If required by law, Tenant shall obtain a fugitive dust permit from the Colorado Department of Health and Environment.
- C. **Stormwater Permit.** If required by law, Tenant shall obtain a construction stormwater permit from the Colorado Department of Public Health and the Environment.
- D. **Soil Erosion and Sedimentation Control.** Tenant shall submit a plan for the City review and approval pertaining to proposed measures to control soil erosion and sedimentation during construction. The plan shall comply with Technical Specification for Temporary Erosion and Sedimentation Control. These specifications address topsoil stripping, soil stockpiling, runoff control, sedimentation (traps), air and water pollution, maintenance and inspection. Tenant shall implement prudent industry practices in preventing soil erosion and controlling sedimentation.
- E. **Solid and Hazardous Waste Controls.** Tenant is responsible for minimizing the amount of “solid” and hazardous waste generated during construction activities. “Solid waste” is defined as all putrescible and nonputrescible solid, semi-solid and liquid wastes, but does not

include hazardous waste. An attempt should be made to recycle generated waste. Disposal of waste shall be used as a last resort. Tenant is responsible for the safe disposal of all solid and hazardous waste and shall dispose of such waste in accordance with all applicable laws, regulations and ordinances. Tenant shall minimize the land disposal of construction waste to the maximum extent practicable. Activities under this provision include the recycling of rebar, concrete, oil, asphalt and drywall.

- F. Noise and Vibration Control. Tenant shall comply with all noise and vibration control requirements of Denver International Airport Technical Specification Section 01566, or any successor policy.

**16. AS-BUILT DRAWINGS.** Not later than sixty (60) days after completion of all work for the System and any Site Improvements, Tenant shall provide the City complete sets of as-built drawings prepared in accordance with reasonable instructions from the City. If Tenant fails to provide the as-built drawings after written notice from the City, the City may elect to have the drawings completed and charge Tenant for the costs associated therewith. Tenant agrees that, upon the request of the City, Tenant will inspect the Lease Premises jointly with the City to verify the as-built drawings. All material improvements made by Tenant shall be subject to inspection by the City and approval by CEO within fourteen (14) calendar days of request for approval, and shall be removed and replaced at Tenant's sole cost immediately if disapproved.

**17. BUILDING PERMIT.** Tenant or its contractor are solely responsible for applying for, obtaining, and paying for all required building permits, licenses and other approvals, and is responsible for submitting plans and specifications to the City's Building Inspection Division for the necessary building permits.

**18. CONSTRUCTION BONDS.** Prior to the commencement of construction, Tenant shall deliver to DEN a payment and performance bond in a sum not less than One Hundred Percent (100%) of the cost of removal of the System during the construction period. All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City and shall be in form and with condition as provide in DEN Development Guidelines. In lieu of such construction bond, the Tenant may provide only such alternate forms of security as are permitted in DEN Development Guidelines, in such form and with conditions as provided therein.

**19. CONSTRUCTION INSURANCE.** Tenant agrees to secure or require each contractor to secure and to keep in full force and effect during the construction period and until completion of the System and Site Improvements insurance as may reasonably be required by DEN's Risk Manager.

**20. COMPLIANCE WITH ALL LAWS AND REGULATIONS.** Tenant agrees not to use or permit the Lease Premises to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Lease Premises in accordance with all applicable federal, state and local laws and all general rules and

regulations adopted by the City or the CEO for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations, regulations, requirements or actions of the Federal Aviation Administration or other authorized federal agency. Tenant further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Tenant or which the CEO may reasonably request relating to Tenant's operations.

**21. PREVAILING WAGE.** Tenant shall require its contractors and all of its subcontractors and subtenants to pay every worker, laborer or mechanic employed by them in the performance of the construction of improvements on the Lease Premises prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Auditor or his authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement concerning the records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 49-173, Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, herein above set forth, shall result in an order from the CEO for the work to cease until there is satisfactory evidence that the violation has been remedied and will not recur. The issuance of a stop-work order shall not relieve the contractor's surety of any liability on the contractor's bond or bonds, but such a stopwork order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

**22. SMALL BUSINESS OPPORTUNITY DIVISION.** The Director of the Division of Small Business Opportunity ("DSBO") will review the employment practices of Tenant's contractors and all levels of subcontractors and suppliers, and the utilization by the contractors of Minority and Women Business Enterprises (MBE and WBE) and/or Disadvantaged Business Enterprises (DBE), in connection with work performed on the Lease Premises. The reviews will be made to determine whether or not all applicable rules, regulations, ordinances, and laws governing equal employment opportunity, affirmative action programs, and MBE, WBE and DBE requirements are complied with. This Lease is subject to all applicable provisions of Divisions 1 and 3 of Article III of Chapter 28 of the City's Revised Municipal Code and the MBE and WBE Program's Rules and Regulations. Tenant acknowledges its continuing duty, pursuant to Denver's MBE and WBE Ordinances, to maintain throughout the duration of the

Construction Period compliance with the level of participation upon which the City approved the award of this Lease to the Tenant.

**23. RESTRICTION ON CHANGES AND ALTERATIONS.** Tenant agrees not to materially improve, change, alter, add to, remove or demolish all or any of the System or Site Improvements without the prior written consent of the CEO or her authorized representative, which consent shall not be unreasonably withheld. Tenant must comply with all conditions which may be reasonably imposed by the CEO. Full and complete specifications for all work and material improvements, along with a statement of the time required to complete such work shall be submitted to and approved in writing by the CEO or her authorized representative within fourteen (14) calendar days of submission and before construction work commences. Four copies of plans for all changes or alterations shall be given to the Director, Airport Engineering for review and written approval prior to commencement of construction. After City's final approval, City shall return to Tenant one approved copy for its records and shall retain one approved copy as an official record thereof.

**24. ALTERATIONS AND CONSTRUCTION RIGHTS.** Tenant may, at its expense and without the consent of Landlord, make any alterations, additions, improvements and changes to the Premises that Tenant deems reasonably necessary in the operation of its business and the Intended Use, including, without limitation, installation of the System, fencing, security devices and/or signage, and excavating, grading, leveling, or otherwise modifying the Land; provided, that such alterations, additions, improvements and changes are made in compliance with applicable laws. Landlord shall assist tenant, as reasonably requested, in connection with obtaining any approvals as Tenant shall deem necessary or desirable in connection with the operation of the Premises.

**25. END OF TERM; REMOVAL OF TENANT PROPERTY.** Within one hundred twenty (120) days after the expiration or earlier termination of the Term, Tenant shall completely remove all of Tenant's Property and vacate the Premises. The removal of Tenant's Property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Premises to be used for the same purposes existing as of the Effective Date, and Tenant shall leave the Premises free of any conditions created by Tenant which present a current unreasonable risk of harm to Landlord or members of the public. Tenant shall do the following with respect to any portions of the Property disturbed by Tenant in the course of Solar Operations: (a) within six (6) months after completion of construction of each Phase of Tenant's Project, Tenant shall restore such portions of the Property to a condition reasonably similar to its condition as of the Effective Date, except for any parts of the Property that Tenant determines it needs for continuing Solar Operations, including those areas within the Premises and (b) within twelve (12) months after the expiration, surrender, or termination of this Lease, Tenant shall (i) decommission and remove from such portions of the Property any Solar Energy System owned or installed by Tenant thereon and (ii) restore such portions of the Property to a condition reasonably similar to its condition as of the Effective Date, including if applicable, reseed disturbed soil with seed consistent with grass types in the vicinity of the Property. Tenant shall have a continuing license to enter the Property for such purpose during such twelve (12) month period. This Section shall survive the expiration or earlier termination of this Lease and bind the

Company, and its assigns, until the restoration of the Property and decommissioning of the Project is completed. For the avoidance of doubt, Tenant shall have no obligation to restore any any improvements demolished and removed from the Premises and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. If Tenant fails to vacate the Premises in accordance with this Section, Landlord shall be entitled to holdover rent in the amount equal to one hundred twenty-five percent (125%) of Rent, prorated on a daily basis, for each day that Tenant fails to so vacate the Premises. Any such holdover shall be construed as a tenancy from month-to-month. Tenant will continue to pay rent until said restoration of the Property and decommissioning of the Project is completed.

**26. FIRE OR OTHER CASUALTY.** If during the Term, all or part of the Premises or Tenant's Property are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Tenant's sole and absolute discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Premises and/or Tenant's Property, as applicable, then Tenant may terminate this Lease by providing Landlord with written notice of the same and vacating the Premises in compliance with Section 13 hereof. Tenant, or its successor in interest, shall be entitled to 100% of any proceeds from casualty insurance policies maintained by Tenant.

**27. CONDEMNATION.**

- A. If all or part of the Premises and/or Tenant's Property shall be subject to condemnation, the exercise of the power of eminent domain, or other governmental taking (the foregoing, collectively, a "Taking") with the result that, in Tenant's sole and absolute discretion, the unaffected portion of the Premises is insufficient or otherwise unsuitable for Tenant's continued use of the Property for the Intended Use or such other use as existed at the time of the Taking (a "Total Taking"), then Tenant may terminate this Lease by providing Landlord with written notice of the Total Taking, the Lease shall terminate effective as of the date set forth in such notice, and Tenant shall vacate the Premises in accordance with Section 25.
- B. If all or part of the Premises and/or Tenant's Property shall be subject to a Taking that, in Tenant's sole and absolute discretion, does not constitute a Total Taking (a "Partial Taking") then (i) concurrently with such Taking this Lease shall terminate with respect to the affected portion of the Premises, which Tenant shall vacate in accordance with Section 25, (ii) this Lease shall continue in full force and effect with respect to the unaffected portion of the Premises and (iii) the Acreage shall be reduced for each Acre (or portion thereof) subject to the Taking, and the Rent shall be reduced accordingly. For purposes of clarification only, Tenant shall be entitled to remove Tenant's Property from any portion of the Premises that is subject to a Taking.
- C. Tenant shall have the right but not the obligation to participate in any proceedings with respect to a Taking; in such event Landlord shall cooperate with Tenant to facilitate such participation. The proceeds of any Taking shall be apportioned as between Landlord and Tenant as follows: Landlord shall receive an amount equal to the fair market value of the Land subject to the Taking, but not the improvements constructed or placed by Tenant thereon. Tenant shall receive such amounts as may be awarded for the loss of use of the Premises so Taken, including any improvements constructed or placed by Tenant on the

Land, and the loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such Taking,

**28. DEFAULT; REMEDIES.** The failure by a party hereto to perform its obligations under this Lease, if not remedied within thirty (30) calendar days of written notice of such failure from the other party, or if such failure is not capable of being remedied within thirty (30) days, remedial action is not commenced and diligently pursued within such thirty (30) day period, shall constitute a default hereunder (a "Default"). Following an event of Default, the non-defaulting party may pursue any available remedies at law or in equity, subject to the terms of this agreement. Notwithstanding the foregoing, the non-defaulting party shall take commercially reasonable measures to mitigate damages resulting from such Default.

**29. INDEMNIFICATION.**

- A. Tenant agrees to release and indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its construction and/or operations in connection herewith, or its use or occupancy of any portion of DEN and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Tenant; provided, that the Tenant need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Tenant hereunder.
- B. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the System and any Site Improvements or other improvements to or upon the Airport made by Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or Airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. The City agrees that no liability shall attach to Tenant as a result of any City-caused interference or delay.

**30. NOTICES.** All notices, elections, demands, requests, and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts or by email transmission, addressed to the party to be served at the address indicated in the Basic Lease Terms Summary above or at such other address as may hereafter be designated in writing by either party hereto, or by any other method if actually received. The time and date on which mail is

postmarked shall be the time and date on which such communication is deemed to have been given.

**31. OBSTRUCTIONS.** Landlord hereby grants to Tenant during the Term of this Lease a license for light, solar energy resources, access (including vehicular and pedestrian ingress and egress) and utility access over, under and across property owned by Landlord which is adjacent to or in the vicinity of the Premises as reasonably necessary for Tenant's conduct of the Intended Use on the Premises and to access the Premises. The Parties agree that obstructions to sunlight are prohibited in all areas of the Property that are between one or more Solar Energy Facilities and upon all property adjacent to the property owned by Landlord on the Effective Date. Specifically, no obstructions shall be installed which cast a shadow on the Solar Energy Facilities as measured by a ratio of 1:2.5 (i.e. a one (1) foot vertical obstruction at 90 degrees from the origin shall be placed at a distance two and 1/2 (2.5) feet or greater horizontally from the origin around the perimeter of the Property). (For example, if a future structure is 20 feet tall then it must be placed at a distance of 50 feet or more from the perimeter of the Property). This prohibition shall apply every day during the Operations Term of each Phase.

**32. CITY UTILITIES.** The City reserves for itself the right to install utilities upon areas of the Premises as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant easements in areas of the Premises for the installation of utilities, provided that the use of such areas or the grant of such easements does not unreasonably interfere with the Tenant's operations and use of the Lease Premises. The Tenant shall not be entitled to any compensation or abatement of rent if the use of such areas or the grant of such easements does not unreasonably interfere with the Tenant's operations or use of the Lease Premises.

**33. CITY TITLE.** Notwithstanding the above, and notwithstanding the System's presence as a fixture on the Lease Premises, the City represents to Tenant that the City has legal title to the Premises and that there are no circumstances known to the City and no commitments to third parties that may damage, impair, or otherwise adversely affect or interfere with the System or its function by blocking the System's insolation and access to sunlight; furthermore, the City covenants that the City shall not cause or permit any such interference with the System's insolation and access to sunlight, except that the Tenant is aware that the System will be serving and is in close proximity to the DEN Aircraft Fire Training Facility, and Tenant expressly declares that neither Tenant nor any related entity shall ever file a claim against the City based on the operation of the Aircraft Fire Training Facility.

**34. LANDLORD'S REPRESENTATIONS AND WARRANTIES.** Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns the Premises in fee simple, and has all requisite right, power and authority to enter into this Lease, without the consent or joinder of any party not joining in the execution hereof;
- (b) the execution of this Lease will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Landlord is a party or by which the Premises or any part thereof is bound;
- (c) to the best of Landlord's knowledge no hazardous or toxic substances have been released or manufactured, or are present on the Premises in amounts in excess of the lawful limit absent a permit, and no underground storage tanks (whether or not abandoned) exist on or under the Premises;
- (d) Landlord has not received any notice of any pending or threatened Taking, zoning change or legal, regulatory or other noncompliance relating to the Premises, or of any possible widening of the streets abutting the Premises;
- (e) Landlord has not received any notice of proposed curtailment of utility services to the Premises;
- (f) there are no existing liens, mortgages, or deeds of trust encumbering all or any part of the Premises;
- (g) there are no delinquent or outstanding Taxes, liens or other impositions levied or assessed against the Premises or any larger parcel of property of which the Premises is a part;
- (h) Landlord is not in the hands of a receiver nor is an application for such a receiver pending, nor has Landlord made an assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy nor is Landlord a defendant in any ongoing or pending litigation proceedings;
- (i) the undersigned representatives of Landlord have full power and authority to execute and deliver this Lease;
- (j) there is no underground septic system or leach field located upon the Premises;
- (k) no person or entity has buried any refuse, construction materials, garbage or any other matter of any kind or nature below the surface of the Premises;
- (l) the Premises are not within an area that is subject to any "environmentally sensitive" or "non-disturbance" designation under any law or zoning ordinance; and
- (m) no portion of the Premises includes any archeological site, burial site, artifact or other condition of archeological, tribal or historical significance.

The provisions of this Section will survive the termination or expiration of this Lease. All of Landlord's representations and warranties contained in this Lease shall be true as of the Effective Date and shall be subject to any state of facts arising during the Term of this Lease without the direct or indirect, active or passive, involvement of Landlord.



**35. INSURANCE.** During the Term, Tenant shall maintain insurance on the terms set forth below, at Tenant's cost and expense:, and to keep in force at all times during the Term hereof, insurance for general and professional liability, automobile, and worker's compensation in the amounts and on the form of insurance certificate specified on the attached **Exhibit E.** Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, materially changed or modified in a manner that affects this Lease without 30 days prior written notice thereof having been given by certified mail, return receipt requested, to the CEO. Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policies shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance. In addition, a waiver of subrogation in favor of the City shall be attached to each of the policies. Tenant shall furnish separate certificates and endorsements for each subcontractor, if any. All coverage for subcontractors, if any, shall be subject to all of the requirements stated herein.

**36. LANDLORD COVENANTS.** From and after the Effective Date until the expiration or earlier termination of the Term:

- A. Landlord shall not, without the prior written consent of Tenant, (i) institute or consent to any rezoning of the Premises; (ii) cause or permit any activities or conditions that would impair operation of the System, including, without limitation, by erecting or permitting to be erected any cell towers, water towers, billboards, silos, trees or any other natural or man-made structures to be placed, constructed, or to otherwise exist on any property owned or controlled by Landlord that may diminish the quantity of sunlight that otherwise would reach the Premises or that may cause shade or shadows upon the Premises or any portion thereof and per the guidelines of what constitutes obstruction of sun light as provided in Section 31 of this agreement; (iv) cause or permit the violation of any applicable laws, rules, regulations or ordinances applicable to the Premises; or (v) commence (or have commenced against it) any voluntary or involuntarily proceedings in bankruptcy, insolvency or similar proceedings with respect to Landlord.
- B. Landlord shall promptly give Tenant a copy of any notice of any kind received by Landlord regarding the Premises or any Taxes.
- C. Landlord shall comply with and perform all of its covenants, agreements and obligations to third parties, including, but not limited to, payment of government property taxes and assessments (to the extent required under this Lease), and payment and performance of any mortgage or other financing obligations owed to lenders, which affect or relate to the Premises.

**37. MEMORANDUM OF LEASE.** This Lease shall not be recorded; however, within five (5) days following Tenant's request, Landlord and Tenant shall execute a memorandum of this Lease in recordable form, setting forth the following provisions of this Lease, including, without limitation: (a) all information required by law, (b) the License rights granted to Tenant hereunder, and (c) such other provisions of this Lease as the parties may mutually agree to

incorporate therein. Tenant shall cause the memorandum of lease to be recorded in the County records against the Premises.

**38. ASSIGNMENT.**

- A. Neither party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Tenant may assign any of its rights, duties or obligations under this Lease (i) to one or more of its affiliates, (ii) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction, (iii) to any person or entity succeeding to all of the assets and liabilities of the Tenant or (iv) to a successor entity in a merger or acquisition transaction.
- B. With respect to an assignment pursuant to clause (ii) in the immediately preceding sentence, the City acknowledges and agrees that, upon receipt of written direction by a financing-transaction assignee of the Tenant (“**Lender**”), and notwithstanding any instructions to the contrary from the Tenant, the City will recognize Lender, or any qualified third party operator or owner to whom Lender has reassigned the rights of the Tenant under this lease, as the proper and lawful lessee of the Lease Premises and as the proper and lawful successor to the Tenant with respect to access to the Lease Premises across or through the Land and fully entitled to receive the rights and benefits of the Tenant hereunder so long as Lender or its assignee performs the obligations of the Tenant hereunder. The City shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which the City shall in good faith believe (a) to be genuine and (b) a copy of which shall have been delivered to the Tenant. The City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

In addition, the City agrees and consents as follows:

- (i) The City agrees to notify any properly identified Lender in writing, at the address to be designated by Lender, upon not less than five (5) business days’ written notice to the City prior to any notice by the City hereunder, of any act or event of default of the Tenant under the Lease of which the City has knowledge that would entitle the City to cancel, terminate, annul, or modify the Lease or dispossess or evict the Tenant from the Lease Premises or otherwise proceed with enforcement remedies against the Tenant, and Lender shall have the same amount of time as the Tenant, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by the Tenant under the Lease; provided that in no event shall Lender be obligated to cure any such default.
- (ii) The City consents to Lender’s security interest in the Collateral and waives all right of levy for rent and all claims and demands of every kind against the Collateral, such waiver to continue so long as any sum remains owing from the Tenant to the

Lender. The City agrees that the Collateral shall not be subject to distraint or execution by, or to any claim of, the City.

(iii) The City hereby consents to Lender accessing the Lease Premises for the purpose of inspecting the Collateral.

### **39. THIRD PARTY PROTECTIONS.**

- A. Tenant may pledge, sell, grant and/or assign, sublease, mortgage and otherwise transfer (each, a “**Transfer**”) this Lease or Tenant’s leasehold interest in the Premises, in whole or in part, without Landlord’s prior consent, in connection with the financing or re-financing of Tenant’s Property. Tenant shall notify Landlord in writing of the existence of, and contact information for, any third party (including, without limitation, any tax-credit equity providers) with a security interest or other interest in the Lease, whether via a collateral Transfer or otherwise (any such third party, an “Additional Notice Party”). Upon such notice, the following provisions shall apply until such time as Landlord shall receive written confirmation that such Additional Notice Party's interests in this Lease, the System or the Premises are released:
- (1) No assignment, amendment, election to terminate or other modification of this Lease shall be effective unless approved by the Additional Notice Party in writing. In the event of Tenant’s voluntary surrender of the leasehold estate, there shall be no merger of the leasehold estate created by this Lease with the fee without the prior written consent of the Additional Notice Party, which consent shall not be unreasonably withheld.
  - (2) If any event of Default by Tenant remains uncured following the applicable cure period, Landlord shall send written notice of such uncured Default to each Additional Notice Party at the address provided therefor, whereupon the Additional Notice Party shall have an additional thirty (30) days during which it may, in its sole and absolute discretion, cure such Default on Tenant's behalf. Landlord may not pursue any remedy for such Default unless it remains uncured following the expiration of such Additional Notice Party's thirty (30) day cure period.
  - (3) Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as the Rent and all other obligations of Tenant hereunder are paid or performed by or on behalf of Tenant or the Additional Notice Party in accordance with the terms of this Lease.
  - (4) An Additional Notice Party shall have the right, subject to the terms and conditions of this Lease: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Tenant’s Property, the leasehold estate or any portion thereof and to perform all obligations to be performed by Tenant hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Landlord’s consent shall not be required for the acquisition of the encumbered leasehold estate or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure. During

any period of possession of the Premises by an Additional Notice Party (or a receiver requested by such Additional Notice Party) and/or during the pendency of any foreclosure proceedings instituted by an Additional Notice Party, the Additional Notice Party shall pay or cause to be paid all other monetary charges payable by Tenant hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Tenant's leasehold estate by the Additional Notice Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale and subject to the provisions of this Section, this Lease shall continue in full force and effect and the Additional Notice Party or party acquiring title to Tenant's leasehold estate shall, within thirty (30) days, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion.

- B. Subject to the terms and conditions hereof, Landlord hereby waives any lien, security interest, or claim of any nature that Landlord now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to Tenant's Property and other of Tenant's property that is or may be from time to time hereafter located at the Premises and/or the Landlord's adjacent property, if any, and to which Tenant at any time has granted or will grant a security interest to an Additional Notice Party (all such property and the records relating thereto shall be hereafter called the "Collateral"). Landlord recognizes and acknowledges that any claim or claims ("Claims") that an Additional Notice Party has or may have against such Collateral by virtue of any lien or security interest are superior to any lien, security interest, or claim of any nature that Landlord now has or may hereafter have to such Collateral by statute, rule, regulation, common law, agreement or otherwise. The waiver provided for herein shall be effective until the discharge of the Claims. Landlord further agrees to notify any purchaser of the Premises and/or the Landlord's adjacent property and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing waiver of Landlord's lien rights, which shall be binding upon the executors, administrators, successors and transferees of Landlord, and shall inure to the benefit of the successors and assigns of any Additional Notice Party. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent an Additional Notice Party from the Premises for the purpose of inspecting the Collateral.

**40. ESTOPPEL.** Upon the request of either party (or any Additional Notice Party), the non-requesting party shall deliver to the requesting party a certificate setting forth the material terms of the Lease, the existence of any Default under the Lease, the date through which Rent has been paid and any amounts on deposit with Landlord, the current Rent rate, and such other reasonable terms requested by the requesting party. The failure by the non-requesting party to respond to such request within fifteen (15) days shall constitute an event of Default, and in addition, shall result in the deemed acceptance, approval and confirmation of the truth of the matters set forth in the certificate sent with the original request.

**41. GOVERNING LAW.** This Lease shall be construed and enforced in accordance with the laws of the state of Colorado, and any disputes arising from or relating to this Lease shall be construed, governed and interpreted and regulated under the laws of such state.

Disputes arising out of this Lease shall be resolved by administrative hearing before the CEO following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, provided, that the City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

**42. INTERPRETATION; AMENDMENT.** The terms of this Lease shall not be amended, restated, changed or otherwise modified except in a writing signed by Landlord, Tenant and any Additional Notice Party. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**43. INTEGRATION; ANTI-MERGER.** This instrument, including the attached Exhibits, contains the complete agreement of the parties regarding the subject matter of this Lease, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease. This Lease shall continue until the expiration or termination of the Lease and Term, and shall not be extinguished by operation of law pursuant to the acquisition by a single party of the interests in both Tenant and Landlord hereunder.

**44. EXCLUSIVE CONTROL; QUIET ENJOYMENT.** Tenant shall have exclusive control, possession, occupancy, use and management of the Premises on and after the Rent Commencement Date, subject to any easements or security instruments existing on the Effective Date, or as caused by Tenant, and Landlord shall warrant and defend Tenant's right to quietly hold and enjoy the Premises. Tenant, and its agents, guests, subtenants and designees, and any Additional Notice Party, shall have access to the Premises at all times after the Rent Commencement Date, and neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises except as specifically permitted under this Lease. For the avoidance of doubt, this Lease does not convey any subsurface oil, gas, mineral, liquid or other subsurface rights (collectively, "Mineral Rights") to Tenant; provided, however, that Landlord shall not engage in, and shall not permit, any activity, including, without limitation, the extraction of minerals, oil, gas, liquid or other substances, if such activity could result in a failure of subsurface support for the Premises or otherwise impair or adversely affect Tenant's Property or Tenant's use of the Premises. The foregoing sentence shall be a covenant running with the Land binding upon any party owning any interest in, or rights to develop or use such Mineral Rights. To the best knowledge of Landlord, Landlord is the sole owner of the Mineral Rights and Landlord holds good, indefeasible and insurable title to the Mineral Rights.

**45. ACCESS.** Tenant, its agents and employees, have a non-exclusive right of ingress to and egress from the Premises by a means of access located outside the Premises as specified by DEN. DEN may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or other right-of-way for such access, ingress and egress, and any other area at the Airport or in its environs presently or hereafter used as such, so long as there is reasonable access, ingress, and egress available to the Premises, excepting in the case of severe

snow storms, other extreme and materially adverse weather conditions, and any increased security alerts. Tenant hereby releases and discharges the City of and from any and all demands, or causes of action which the Tenant may at any time have against the City arising or alleged to arise out of the closing of any roadway or other right-of-way for such access, ingress, and egress or other area at the Airport or in its environs used as such, so long as reasonable and proper notice of such modification was given by the City to Tenant, and reasonable access, ingress, and egress is available after any such modification.

**46. RIGHT OF INSPECTION.** Landlord retains the full right of entry upon the Lease Premises, with reasonable notice to Tenant, for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection or conducting any testing it deems necessary; provided that such entry upon the Premises does not unreasonably interfere with the Tenant's operations and use of the Premises. Landlord shall not be obligated to notify Tenant in advance of any entry upon the Premises by Landlord or agent of Landlord that is deemed by Landlord to be of any emergency nature, in the sole discretion of Landlord, and Landlord agrees to give notice to Tenant within a reasonable time after such emergency entry. No such entry by or on behalf of Landlord upon the Premises shall constitute or cause a termination of the Lease nor shall such entry be deemed to constitute an interference with the possession thereof by the Tenant.

**47. BOOKS OF ACCOUNT AND AUDITING.**

- A. In connection with any action performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Tenant's which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Tenant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.
- B. The City and the Auditor of the City or any of his duly authorized representatives, until the expiration of three years after the final payment under this Agreement, shall have access to and the right to examine any directly pertinent books, documents, papers and records of Tenant which are related to work performed under this Agreement without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

**48. STORAGE TANKS.** Neither above ground nor underground storage tanks will be permitted on the Lease Premises (this includes special enclosure equipment).

**49. WASTE OR IMPAIRMENT OF VALUE.** Tenant agrees nothing shall be done or kept on the Premises which would materially impair the value of the Landlord's property or which would constitute waste or a public or private nuisance. The parties acknowledge that

the Premises is being used to host an electricity grid-connected photovoltaic solar power plant.

**50. STRUCTURAL OR ELECTRICAL OVERLOADING.** Tenant agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the System or any site improvements which might result in an overload of utility lines serving the Airport or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Tenant agrees to immediately remedy the violation at Tenant's expense, as soon as reasonably practicable once Tenant becomes aware of such violation.

**51. NOISE, ODORS, VIBRATIONS AND OTHER ANNOYANCES.** Tenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Lease Premises or annoy, disturb or be offensive to others at the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, vapors, odors, lights and vibrations.

**52. ACCESSIBILITY.** Tenant shall not do or permit to be done anything which might interfere with or hinder police, firefighting, or other emergency personnel in the discharge of their duties.

**53. NO OTHER ENCUMBRANCES.** Tenant covenants and agrees not to encumber the Premises or City property without the prior written consent of the CEO, and to keep the Premises free from all liens and encumbrances.

**54. WAIVER.** The waiver by any party of any instance of a breach of any covenant or agreement herein shall not be deemed to constitute waiver of any subsequent breach of the same or any other covenant or agreement under this Lease.

**55. NONRECOURSE.** The performance of this Lease by Landlord and Tenant shall be secured by their respective interests in the Premises. Except for such interests in the Premises, neither Landlord's, nor Tenant's property or assets (including without limitation Tenant's Property), shall be subject to levy, execution, or any other enforcement procedure in connection with the satisfaction of liability under this Lease.

**56. CONSENTS; FURTHER ASSURANCES.** Each party shall execute and deliver such further documents and perform such other acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease. The parties further agree that, to the extent the consent or approval of either of them is required, requested or appropriate under this Lease, such consent or approval shall not be unreasonably or unduly withheld, delayed, or conditioned, and except as may otherwise be expressly provided for herein, each party shall bear its own costs and expenses, including legal costs, in connection with such consent or approval.

**57. COUNTERPARTS.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file,

such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile were an original thereof.

**58. SURVIVAL.** Upon the expiration or earlier termination of this Lease in accordance with its terms, this Lease shall cease to have force and effect, except as specifically stated in this Lease or unless the context requires otherwise to achieve the parties' intent with respect thereto.

**59. AGREEMENT SUBORDINATE TO AGREEMENTS WITH UNITED STATES.** This Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system. The provisions of the attached Appendices are incorporated herein by this reference.

**60. BOND ORDINANCES.** This Lease is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Airport and airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Lease acknowledge and agree that all property subject to this Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Tenant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Tenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Lease) not to claim depreciation or an investment credit with respect to any property subject to this Lease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

**61. INDEPENDENT CONTRACTOR.** The parties agree that Tenant shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Nothing in this Lease shall be construed to mean or imply that Tenant is a partner, joint venturer, agent or representative of, or otherwise associated with, the City. Neither the City nor Tenant shall represent to others that one party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other party.

**62. SECURITY.** Tenant shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City pursuant to regulations of the Transportation Security Administration and Federal Aviation Administration, as they may be amended from time to time.

**63. NONDISCRIMINATION.** In connection with the performance of work under this Lease, Tenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race,



color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Tenant further agrees to insert the foregoing provision in all subcontracts hereunder.

**64. NON-EXCLUSIVITY.** The City reserves the right to grant to other tenants the right to provide the same or similar services as described in this Lease at other locations at the Airport and in the City; provided, however, that such grant to other tenants shall not interfere with Tenant's rights hereunder. Tenant expressly understands and agrees that although it has the exclusive right to produce solar energy on the Premises, its rights to produce solar energy for the City and County of Denver are not exclusive.

**65. TAX CREDITS.** Both Parties agree to work together in good faith to restructure this agreement if a leasehold interest in the nature of that held by Tenant or Tenant's assignee becomes ineligible for any tax credit, benefit or incentive for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government.

**66. MARKETING.** Following the Construction Commencement Date and continuing until the expiration or earlier termination of this Lease, Landlord gives and grants to Tenant and Tenant's affiliates, and each of their respective licensees, agents, representatives, employees, successors and assigns (collectively, the "Licensed Parties"), the right and license to photograph, publish and use photographs (whether still or moving) of the Premises in all media and types of advertising and promotion by the Licensed Parties

**67. STATE SPECIFIC PROVISIONS.** In the event of any inconsistencies between the terms and conditions of this Section 46 and the other terms and conditions of this Lease, the terms and conditions of this Section 46 shall control and be binding:

(a) As used in this Lease, "UCC" shall mean the Colorado Uniform Commercial Code as amended, or any replacement or successor statute or code.

(b) Except as expressly required in the Lease, Tenant shall not be obligated to pay any amount as rent, additional rent, expense reimbursements, real property taxes, transaction privilege taxes or otherwise.

(c) Without limiting Landlord's covenants stated above, Landlord agrees to exercise prudent dust control practices upon the portion of the Land that is not part of the Premises and upon any other nearby land that Landlord owns or controls, including but not limited to complying with all laws and governmental regulations pertaining to dust control.

**68. FINAL APPROVAL.** This Lease is expressly subject to and shall not be or become effective or binding on either party until approved by the City Council and fully executed by all signatories hereto, including all signatories of the City and County of Denver.

**[END OF LEASE TEXT; SIGNATURE PAGES, APPENDICES, AND EXHIBITS FOLLOW]**

**Contract Control Number:**

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 \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PLANE-201737450-00

**Contractor Name:** Oak Leaf Solar XXVI LLC

By: 

Name: John Hereford  
(please print)

Title: CEO  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

During the term of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies, and/or;
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX C

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, MAINTENANCE, OPERATION OF FACILITIES

As used below, the term “sponsor” will mean City.

Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, as may be amended from time to time, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, sponsor will have the right to terminate this Agreement, and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

## **APPENDIX D**

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, USE, OR ACCESS TO FACILITIES

As used below, the term “sponsor” will mean City.

- A. Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.
  
- B. With respect this Agreement, in the event of breach of any of the above nondiscrimination covenants, sponsor will have the right to terminate this Agreement and to enter, re-enter, and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

## APPENDIX E

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high



and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

## EXHIBIT A TO GROUND LEASE AGREEMENT

### BASIC LEASE TERMS SUMMARY

<b>Effective Date</b>	The date that this Lease has been fully executed by both Landlord and Tenant as reflected on the signature page(s).
<b>Landlord</b>	The City and County of Denver, a political subdivision of the State of Colorado, through its Department of Aviation which operates Denver International Airport
<b>Tenant</b>	Oak Leaf Solar XXVI LLC, a Colorado limited liability company.
<b>Land</b>	Up to 12 acres, plus or minus and as determined by the parties and per the final site design, of the real property located south of and adjacent to the DIA III Solar Project along 114 <sup>th</sup> Street and Queensburg Blvd and east of the fire training station in Denver, Colorado, as approximately depicted on <u>Exhibit A</u> attached hereto.
<b>Initial Diligence Period</b> ( <u>Section 3</u> )	365 days.
<b>Extended Diligence Periods</b> ( <u>Section 3</u> )	One (1) additional 60 day period after the expiration of the Initial Diligence Period (“ <b>First Extended Diligence Period</b> ”); [plus one (1) additional 45 day period after the expiration of the First Extended Diligence Period (“ <b>Second Extended Diligence Period</b> ”)]
<b>Extended Diligence Period Fees</b> ( <u>Section 3</u> )	\$500 for the First Extended Diligence Period. [\$500 for the Second Extended Diligence Period.]
<b>Initial Term</b> ( <u>Section 4</u> )	246 calendar months (20.5 years)
<b>Rent</b> ( <u>Section 7</u> )	\$575 per Acre (prorated for any fractional Acre) per year, subject to the terms of <u>Section 2</u> . Rent payments begin at the Construction Commencement Date, defined as the arrival on site of civil grading or pier installation equipment.
<b>Rent Escalation Date</b> ( <u>Section 7</u> )	The anniversary of the first Rent Payment Date (as defined in <u>Section 7(a)</u> )

<b>Rent Escalation Percentage</b> (Section 7)	Escalator will match the annual Consumer Price Index of All Urban Consumers (CPI-U) of the West Region, as provided annually by the U.S. Bureau of Labor Statistics.
<b>Intended Use</b> (Section 11)	The construction and operation of a solar photovoltaic power array (the “ <b>System</b> ”) for the generation and distribution of electric power.
<b>Landlord’s Notice Address</b> (Section 19)	Patrick Heck Denver International Airport
<b>Tenant’s Notice Address</b> (Section 19)	c/o John Hereford/Oak Leaf Energy Partners LLC 2645 East 2 <sup>nd</sup> Avenue – Suite 206 Denver CO 80206 Attn: Asset Management Department Phone: 303-333-1339 Email: john@oakleafep.com



Designed: DCB

Checked: JNH

Drawn: DCB

Record Drawing by/date:

Revisions: # DATE DESCRIPTION

Revisions: # DATE DESCRIPTION

Revisions: # DATE DESCRIPTION

Revisions: # DATE DESCRIPTION

Revisions: # DATE DESCRIPTION

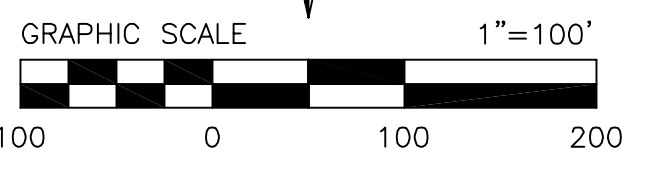
Revisions: # DATE DESCRIPTION

Prepared for:



2645 East 2nd Avenue, Suite 206  
 Denver, CO 80206

Site Name: Jeffco06  
 SRC Number: 053970  
 Garden Operator: Oak Leaf Solar XXVI  
 Site Address: 39.9005, -104.6602



**DIA 2 CSG  
 Solar Garden**

Site Plan

**Exhibit B**

Not for Construction

Date: 9/20/17

Drawing No: 1 of 1

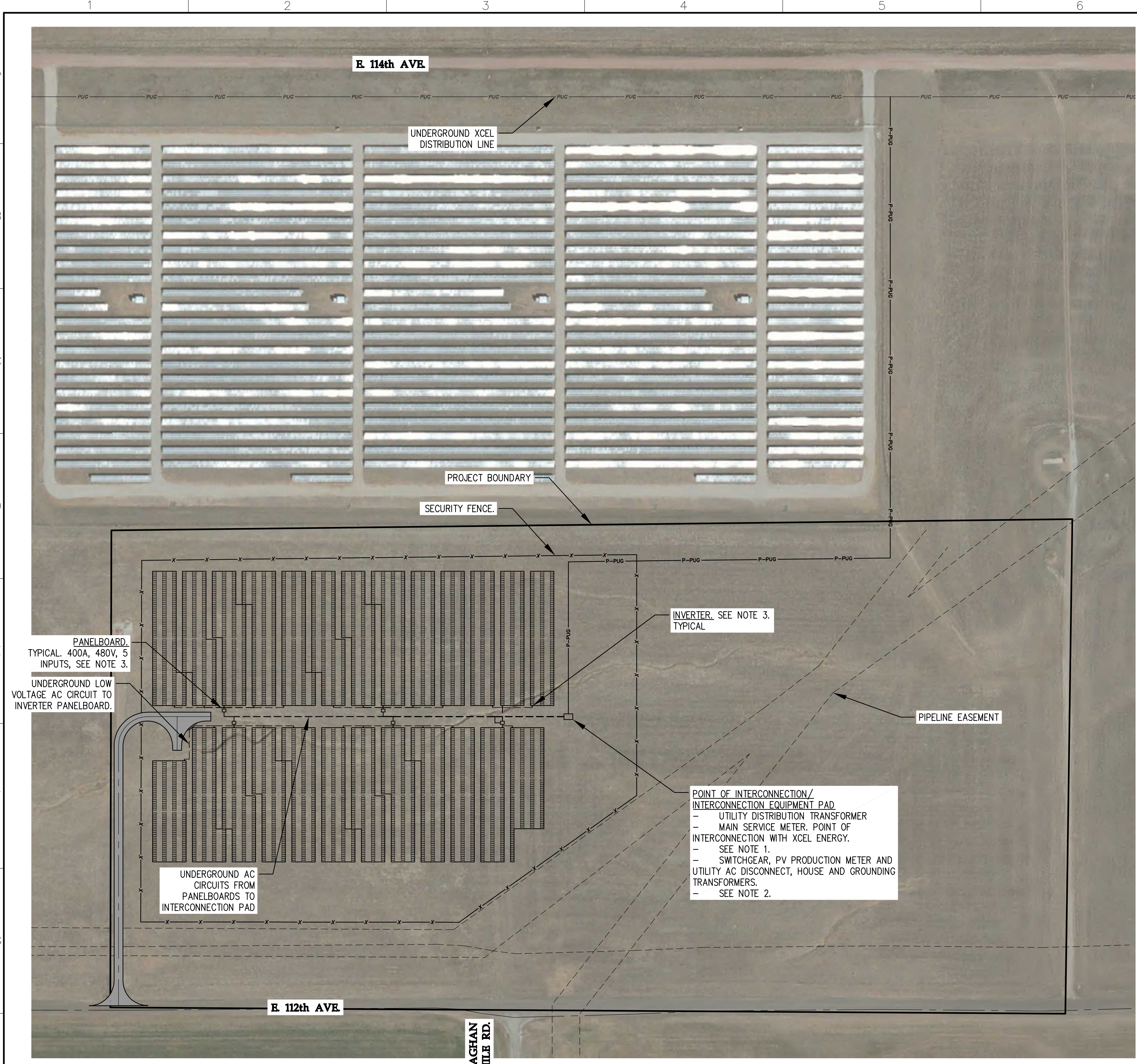
0011139 - XCEL DIA II Tracker Site Plan.dwg

**NOTES**

1. POINT OF INTERCONNECTION PER XCEL ENERGY STANDARDS FOR SECONDARY SERVICE INSTALLATION.
  - 1.1. UTILITY-PROVIDED MAIN SERVICE METER (POINT OF COMMON COUPLING WITH XCEL ENERGY) PROVIDE YELLOW PLACARD WITH BLACK LETTERING STATING "PHOTOVOLTAIC SYSTEM CONNECTED". REFER TO SINGLE LINE DIAGRAM FOR LABELING NOTES.
  2. INTERCONNECTION EQUIPMENT PAD. SWITCHGEAR, PV PRODUCTION METER, UTILITY AC DISCONNECT, TRANSFORMER FOR HOUSE POWER, AND GROUNDING TRANSFORMER.
    - 2.1. PV PRODUCTION METER: UTILITY-PROVIDED METER, CUSTOMER-PROVIDED ENCLOSURE.
    - 2.2. UTILITY AC DISCONNECT. UTILITY ACCESSIBLE, LOCKABLE, AND WITH OPENING VIEWABLE WITHOUT UNBOLTING COVERS OR ASSISTANCE FROM SITE PERSONNEL PER XCEL'S "SAFETY, INTERFERENCE AND INTERCONNECTION GUIDELINES FOR COGENERATORS, SMALL POWER PRODUCERS AND CUSTOMER-OWED GENERATION" SECTION 4.2.
    - 2.3. TRANSFORMERS. PROVIDE HOUSE POWER TRANSFORMER; AND GROUNDING TRANSFORMER.
3. INVERTER. TWENTY-FIVE (25) 60KW INVERTERS. FIVE (5) 60KW INVERTERS PER PANELBOARD. EACH INVERTER PROVIDES INTEGRATED AC AND DC DISCONNECTS. AC POWER FROM INVERTERS IS COMBINED AT EACH PANELBOARD. AC POWER FROM PANELBOARDS IS COMBINED AT SWITCHGEAR.
4. REFER TO SINGLE LINE DIAGRAM FOR DETAILS.
5. INSTALLATION TO COMPLY WITH NEC 2014 ARTICLE 690, XCEL ENERGY'S (BLUE BOOK) "STANDARD FOR ELECTRIC INSTALLATION AND USE", MAY 15, 2015; XCEL ENERGY'S "SAFETY, INTERFERENCE AND INTERCONNECTION GUIDELINES FOR COGENERATORS, SMALL POWER PRODUCERS AND CUSTOMER-OWNED GENERATION", AND ALL APPLICABLE LOCAL, STATE AND NATIONAL CODES OR REGULATIONS.
6. EQUIPMENT SHALL BE LABELED PER NEC 690 AND XCEL ENERGY REGULATIONS.
7. 16' ACCESS ROADS SHALL BE DESIGNED TO ACCOMMODATE ALL CONSTRUCTION, OPERATIONS, AND MAINTENANCE TRAFFIC THROUGHOUT THE SITE.

**PLANT SUMMARY**

- 1500 KW-AC
- 1997.1 KW-DC
- 350W JA SOLAR JAM6(K)-72-350 72-CELL MODULE
- 5706 PV MODULES
- 18-MODULE STRING
- 317 STRINGS
- 25-60KW CHINT CPS SCA60JTK-D0/US-480 INVERTERS



**POINT OF INTERCONNECTION/  
 INTERCONNECTION EQUIPMENT PAD**  
 - UTILITY DISTRIBUTION TRANSFORMER  
 - MAIN SERVICE METER. POINT OF INTERCONNECTION WITH XCEL ENERGY.  
 - SEE NOTE 1.  
 - SWITCHGEAR, PV PRODUCTION METER AND UTILITY AC DISCONNECT, HOUSE AND GROUNDING TRANSFORMERS.  
 - SEE NOTE 2.

INVERTER. SEE NOTE 3. TYPICAL

PANELBOARD. TYPICAL. 400A, 480V, 5 INPUTS, SEE NOTE 3.

UNDERGROUND LOW VOLTAGE AC CIRCUIT TO INVERTER PANELBOARD.

UNDERGROUND AC CIRCUITS FROM PANELBOARDS TO INTERCONNECTION PAD

**1 Site Layout**  
 1"=100'



**Exhibit C – Termination Value**

Year	Termination Value
Year 1	\$3,498,650
Year 2	\$3,199,552
Year 3	\$2,931,804
Year 4	\$2,660,340
Year 5	\$2,372,621
Year 6	\$2,068,880
Year 7	\$1,996,493
Year 8	\$1,910,963
Year 9	\$1,812,425
Year 10	\$1,699,531
Year 11	\$1,570,807
Year 12	\$1,424,644
Year 13	\$1,259,282
Year 14	\$1,072,804
Year 15	\$863,112
Year 16	\$734,702
Year 17	\$638,872
Year 18	\$543,041
Year 19	\$447,210
Year 20	Fair Market Value

**EXHIBIT **  
**DIA ENVIRONMENTAL REQUIREMENTS**

**Section 1. General Requirements.** Tenant, in conducting any activity on DIA property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders (Environmental Requirements) and the applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA's Environmental Guidelines, Environmental Policy, and all Rules and Regulations are available at [www.flydenver.com/biz/index.asp](http://www.flydenver.com/biz/index.asp). These Environmental Requirements address, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, solid and hazardous waste, or petroleum products; the National Environmental Policy Act (NEPA); and other federal, state, and local water, wastewater, and air quality regulations.

**A. EMS:** DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA's significant environmental aspects, and the specific environmental aspects and associated impacts for the products, goods, and/or services that will be provided by the Tenant.

**B. Permits:** Tenant shall acquire all necessary federal, state, local, and airport permits/approvals and comply with all permit/approval requirements necessary for its activities on the Lease Premises. Tenant shall prepare and update all plans and provide all information required by the City for regulatory compliance purposes.

**C. Hazardous Materials Limited:** Any hazardous materials not reasonably necessary for Tenant's operations are barred from DIA premises. Tenant shall identify all hazardous materials to be used at DIA along with a description of how these materials and any associated hazardous or other waste materials generated by Tenant will be managed while on airport property. This information is required prior to the Tenant conducting activities on DIA property.

**D. MSDSs:** Prior to operation, Tenant shall provide to the City copies of Material Safety Data Sheets (MSDSs) for all chemicals to be used in their activities, including those used for cleaning and maintenance. This obligation is continuing for the Term, and Tenant shall provide updated MSDSs and MSDSs for new chemicals, as such information is updated and as new chemicals are placed into use, as applicable.

**E. Pollution Prevention:** Tenant is encouraged to utilize the concepts of pollution prevention, energy efficiency, and waste minimization with regard to its activities at DIA.

**Section 2. Review of Environmental Documents.** Tenant, at the request of the City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Tenant has prepared pursuant to any Environmental Requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under, or about the work conducted on DIA property, Tenant shall provide a copy of such report or notice to the City.

**Section 3. Access for Environmental Inspection.** The City shall have an unimpeded right of access to the occupancy or work areas with reasonable prior notice to Tenant to inspect the same in order to confirm that Tenant is conducting its activities in accordance with this Lease. In the event the City's inspection of the Lease Premises reveals evidence of a potential non-compliance with the terms of this Lease, at the City's request, Tenant shall conduct any testing and analysis at its cost as is necessary to ascertain whether the Tenant is in compliance with this Lease. If such further testing and analysis determines that Tenant is in compliance with this Lease, the City shall be solely responsible for all costs and expenses related to such further testing and analysis.

**Section 4. Correction of Environmental Non-Compliance.** If the Tenant fails to comply with any applicable Environmental Requirement and such non-compliance continues uncorrected for thirty (30) days after written notice to Tenant, the City, in addition to its rights and remedies described elsewhere in this Lease, at its election, may enter the facility and/or work area and take such measures as may be necessary to ensure compliance with the Environmental Requirements, all at the Tenant's expense.

**Section 5. Duty to Notify City.** In the event of a release or threatened release of a substance in excess of acceptable levels established by applicable law and relating to or arising out of the Tenant's use or activities on DIA, or in the event any claim, demand, cause of action, or notice is made against the Tenant with regard to the Tenant's failure or alleged failure to comply with any requirement hereunder, the Tenant, immediately shall notify the City verbally by contacting the Airport Communications Center (303-342-4200) and the appropriate regulatory agency. Tenant shall immediately control and remediate the contaminated media and, as provided below, follow-up Tenant's verbal notice with a written report within three days of such incident. In addition, the Tenant shall provide the City, at Tenant's expense, with copies of any written claims, demands, notices or actions so made.

**Section 6. Environmental Remediation.** Tenant shall undertake all actions necessary to remedy or remove any released or spilled materials in excess of acceptable levels established by applicable law and any other contamination discovered on or under DIA property introduced by Tenant and shall restore the Access Premises to its condition immediately prior to the initiation of this Lease in compliance with all applicable local, state, federal, or airport laws, rules, regulations, or orders. This work shall be performed at Tenant's expense and the City shall have the right to review the project plan and review and inspect all such work at any time using consultants and representatives of the City's choice. Tenant shall further conduct surface and subsurface monitoring pertaining to Tenant's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits.

**Section 7. Environmental Requirements for Construction.** Tenant agrees to ensure that its premises are designed, constructed, operated, and maintained in a manner that minimizes environmental impacts through application of appropriate preventive measures and complies with Environmental Requirements. Tenant shall comply with the DIA Tenant Development Guidelines, as amended, for any alterations to existing facilities or the construction of any new facilities. In addition, the Tenant shall comply with Exhibit E of this agreement.





## II. ADDITIONAL COVERAGE

### Professional Liability, Design, Engineering and Construction Supervision

#### Minimum Limits of Liability (In Thousands)

Per Claim	\$1,000
Aggregate	\$1,000

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage shall apply for three (3) years after project is complete.
3. Coverage is to be on a primary basis, if other professional coverage is carried.

## III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.