

**AIRLINE CARGO FACILITY LEASE AGREEMENT**

**Between**

**CITY AND COUNTY OF DENVER**

**And**

**SOUTHWEST AIRLINES, CO.**

**At**

**DENVER INTERNATIONAL AIRPORT**

**AIRLINE CARGO FACILITY  
LEASE AGREEMENT**

**THIS AIRLINE CARGO FACILITY LEASE AGREEMENT** (the “**Lease**”), is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, acting for and on behalf of its Department of Aviation (the “**City**”), and **SOUTHWEST AIRLINES CO.**, a corporation organized and existing under and by virtue of the laws of the State of Texas and authorized to do business in the State of Colorado (the “**Airline**”) (collectively, the City and the Airline are the “**Parties**”).

**WITNESSETH**

**WHEREAS**, the City owns and operates Denver International Airport (the “**Airport**”) and has the power to grant rights and privileges with respect thereto, as hereinafter provided; and

**WHEREAS**, the Airline is a certificated air carrier in the business of providing scheduled air passenger service and transporting property, cargo and mail, or one or more thereof, to and from the Airport by aircraft; and

**WHEREAS**, the Parties entered into an Airport Use and Facilities Lease Agreement dated March 20, 2020, contract number 202053303, as amended, (the “**Airport Use Agreement**”) pursuant to which the Airline has certain rights to use the facilities designated therein at the Airport subject to certain obligations; and

**WHEREAS**, the Airline seeks to construct and operate at the Airport a cargo support facility to facilitate the transfer of cargo to and from aircraft at the Airport, (the “**Cargo Facility**”); and

**WHEREAS**, the Parties now wish to enter into this Lease to govern, for the Term, the Parties’ rights and obligations with respect to the Airline’s use of the Ground (as defined below) for the purposes of (i) designing, constructing, and managing the Cargo Facility; (ii) the Airline’s use and operation of the constructed Cargo Facility; (iii) and other rights of the Parties with respect to the Ground and the Cargo Facility.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, the City and the Airline do hereby mutually undertake, promise and agree, each for itself and its successors, as follows:

**PART I  
LEASE AND USE OF THE PROPERTY**

**1.01 LEASE OF GROUND.**

The City hereby leases to the Airline, and the Airline hereby leases from the City, the ground as set forth in **Exhibits A and B** (the “**Ground**”), on the terms and conditions

set forth in this Lease. The City expressly reserves from this Lease (i) all water, gas, oil and mineral rights in and under the soil and (ii) a public right of flight through the air space above the Ground, as defined below. The Parties agree that the total square footage of the Ground equals 95,771.50 square feet. The Ground, together with the Cargo Facility, shall be referred to collectively as the “**Property.**”

**1.02 CONSTRUCTION AND OWNERSHIP OF THE CARGO FACILITY.**

A. The Airline shall have the right to use the Ground for the purposes of (i) designing and constructing the Cargo Facility during the construction process in accordance with the Project Documents, as defined in Section 2.04, and (ii) operating the Cargo Facility on the Ground once the construction is complete.

B. During the Term of this Lease, Airline shall own the Cargo Facility. The Airline shall have the right to use the Ground and operate the Cargo Facility once constructed.

C. Upon the expiration or early termination of this Lease, the Cargo Facility, including all buildings, improvements, fixtures, and the equipment which are constructed on the Ground, but excluding Airline Fixed Property and Airline Personal Property, shall automatically become, at no cost to the City, the sole property of the City.

**1.03 ACCESS.**

Subject to any rules and regulations adopted and promulgated by the City regarding the Airport, including, without limitation, any nondiscriminatory rules and regulations governing entrance to and use of the Airport, the Airline has the right of access, ingress to and egress from the Property for the Airline’s employees, agents, guests, patrons, contractors, subcontractors, and invitees, its or their suppliers of materials and furnishers of services, and its or their equipment, vehicles, machinery and other property; and no fee, charge or toll shall be charged directly or indirectly for access rights to the Property; provided that nothing herein shall change the Airline’s obligations under the Airport Use Agreement. The foregoing shall not preclude the City or its concessionaires or licensees from making and collecting a charge for the use of public motor vehicle parking areas located off the Property, sightseeing facilities, or ground transportation to or from the Airport furnished by the City or its concessionaires or licensees, or preclude the City from imposing any excise taxes, including without limitations, sales, use and occupation taxes, any permit or license fees, and any property or proprietary interest taxes not inconsistent with the rights and privileges granted to the Airline hereunder.

**1.04 MODIFICATION OF ACCESS ROUTE.**

Upon reasonable prior written notice to the Airline, the City 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 to and from the Property, and any other area at the Airport, so long as a means of access, ingress and egress reasonably equivalent to that formerly provided is substituted therefor and is concurrently made

available therefor. The Airline hereby releases and discharges the City from any and all claims, demands or causes of action which the Airline may have against the City from time to time, arising or alleged to arise out of the closing of any roadway, taxiway/apron or other right-of-way for such access, ingress and egress to or from the Property, or other area at the Airport, so long as the City makes concurrently available a means of access, ingress and egress reasonably equivalent to that existing prior to each such modification.

#### **1.05 USE OF THE PROPERTY.**

The Airline shall have the right to use the Ground upon which it may construct the Cargo Facility and, once constructed, use the Cargo Facility for cargo support operations and for purposes reasonably incidental thereto, including, without limitation, office use, and storage use. The Airline, with the approval of the CEO, which approval shall not be unreasonably withheld or delayed, shall be permitted to use the Property for any additional use which constitutes a proper airport purpose and which is related to the operation of a scheduled air transportation business. The Airline shall not commit waste of the Ground and shall not commit or permit any nuisance from or upon the Property.

## **PART II CONSTRUCTION OF THE PROJECT**

#### **2.01 DEFINITIONS.**

- A. Definitions. As used in this Lease:
1. As used in this Part II only, “**City**” means the City and County of Denver and its departments or agencies, but not the DDOA.
  2. “**CMR**” means the entity that entered into the CMR Agreement with the Airline to provide preconstruction and construction services while ultimately serving as a constructor of the Work for the Project during the Construction Phase; the CMR is McCarthy Building Companies, Inc.
  3. “**CMR Agreement**” means that certain Construction Manager at Risk Agreement entered into on or about August 2022 between Airline and the CMR including all Contract Documents as defined therein, whereby the CMR will provide preconstruction and construction services in connection with the construction of the Project.
  4. “**Construction Period**” means that period that begins on the Effective Date of this Lease and ends on (and including) the issuance by the CMR of the Certificate of Substantial Completion.
  5. “**DDOA**” means the Denver Department of Aviation.
  6. “**Current Facility Plans**” shall mean the facility design plans existing as of the Effective Date for the Project.

7. **“Project”** shall mean the design, construction, and management of the construction of the Cargo Facility.
8. **“Work”** means all construction and services, including all preconstruction services and construction services, required by the CMR Agreement and the Contract Documents to perform and complete the Cargo Facility, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the CMR to fulfill the CMR's obligations under the CMR Agreement. The Work includes all alterations, amendments, or extensions made by change order or other written orders or directives of Airline. Unless specified otherwise in the CMR Agreement, the Work includes furnishing all materials, supplies, equipment, tools, labor, transportation, supervision, testing, commissioning, training, and providing maintenance and operations manuals and warranties necessary to perform and fully complete the Work.

## **2.02 ACCEPTANCE AND INSPECTION OF THE GROUND.**

The Airline has been given the opportunity to inspect the Ground. As of the Effective Date, subject to any representations, warranties, covenants, and obligations of the City set forth in this Lease, the Airline takes the Ground as is, where is, and with all faults.

## **2.03 PROJECT COST.**

A. Airline will be exclusively responsible for all costs, fees, and expenses associated with the construction of the Project as set forth in the CMR Agreement and below. The City and the DDOA are not contributing any funds to the Project but have an interest in the Project as it concerns the functioning of the Airport. In addition, the Airline shall be responsible for the following costs and expenses:

1. Wages, salaries, and other such costs for Airline personnel dedicated to the Project and for taxes, employee insurance benefits, contributions, assessments and benefits required by law or collective bargaining agreements applicable to those persons.
2. Permit and inspection coordination, submission and any permit fees.
3. Costs of the premiums for all bonds and liability insurance that the Airline is required to maintain by the Lease.
4. Costs incurred by Airline for reproduction, telegrams, facsimile transmissions, long-distance telephone calls, and postage & express delivery charges in connection with the Work.
5. Costs incurred by Airline for the reasonable travel expenses incurred while traveling in discharge of duties in connection with the Work.

6. Costs associated with the implementation of any safety program for the Project, including any City inspection or audit of such safety program.
7. Costs incurred by Airline for any design professionals, consultants or third parties providing services to the Project.
8. Governmental sales, use or similar taxes directly attributable to the Work for which the Airline is liable and not subject to exemption.
9. Mock-up costs, and the costs of all tests, inspections and approvals, as may be required by the Project Contract Documents or applicable laws, ordinances or public authority for the performance of the Work.
10. Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
11. Costs of debris and waste removal from the Ground and its proper and legal disposal.
12. Costs for temporary and permanent power, lighting, heat, sewer and water services as required to complete the Work and costs for snow removal as required.
13. Costs incurred by the Airline resulting from the failure of Airline or its consultants to coordinate their work with that of the City and its consultants, if any, after agreeing to the schedules thereof, or failure of Airline to comply with directives of the City not in conflict with said schedules.

#### **2.04 THE PROJECT CONTRACT DOCUMENTS.**

A. It is agreed by the Parties that the instruments, drawings and documents relating to the construction of the Project, listed in Subsection (B) below, constitute and shall be referred to as the “**Project Contract Documents**” and all of said instruments, drawings and documents taken together as a whole are hereby fully incorporated into the Lease as if they were set out verbatim and in full herein. The Project Contract Documents represent the entire and complete integration of all understandings between the City and the Airline for the construction of the Project and supersede all prior negotiations, representations or agreements. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement or change order properly executed by the Parties. The intent of the Project Contract Documents is to include all terms, conditions, work items and services necessary or required for the proper execution and completion of the Project. Airline shall execute the Project as set forth in Project Contract Documents.

- B. The Project Contract Documents include the following:
1. The Current Facility Plans (**Exhibit C**);
  2. The CMR Agreement (**Exhibit D**);
  3. Airline QA/QC Matrix (**Exhibit E**);
  4. Airline Construction Safety and Phasing Plan (**Exhibit F**);
  5. Technical Specifications;
  6. Airport Rules, Regulations and Guidelines;
  7. Form of CMR Performance and Payment Bonds (**Exhibit G**);

## **2.05 SCOPE OF WORK.**

A. Airline shall cause the CMR to construct the Project in accordance with the Project Contract Documents. Airline shall cause the CMR to perform the Work under the CMR Agreement in the most expeditious and economical manner, consistent with the interests of the Airline and the DDOA, and in a manner which satisfies the DDOA's longstanding commitment to quality, efficiency, value, innovation, partnering, responsiveness to agency and community needs.

B. The Airline covenants and represents that the Airline is familiar with the Ground and has had sufficient time and opportunity to independently examine and is sufficiently familiar with the Ground layout and materials, the character and nature of all Ground constraints, restrictions and limitations, and limitations on ingress, egress and construction staging and performance; and the local conditions under which the Work is to be performed, including weather conditions and any other factors which may impact the Work. The Airline's own geotechnical investigation shall be the sole basis for knowledge used for design and construction in response to subsurface conditions and for establishment of the Project.

C. Material modifications of the Project Contract Documents (except for those identified in Sections 2.04.B1, 5, and 6) shall be subject to approval by the DDOA and the City, which shall not be unreasonably withheld. The Airline may immediately commence and undertake the performance of any and all Work, as such term is defined. Upon completion of the Construction Period, the Airline will furnish to the DDOA final "as built" drawings for the Cargo Facility in both hard-copy and electronic formats.

D. With respect to the Project, Tenant will to (i) comply with the Denver Green Buildings ordinance, D.R.M.C. 10-300, *et seq.*, and (ii) design and build the Project to meet the U.S. Green Building Council standards for LEED certification.

E. Upon (i) completion of the construction as described in the Contract Documents and (ii) issuance of a Certificate of Substantial Completion for the Cargo

Facility, the Parties shall execute a letter, in the form attached as **Exhibit H**, confirming that the construction is completed, a Certificate of Substantial Completion for the Cargo Facility has been issued, and that the Parties therefore acknowledge that all Project requirements thereunder are deemed dissolved and of no further force or effect.

## **2.06 COORDINATION AND COOPERATION.**

A. The Parties agree to fully cooperate and coordinate fully with each other in the performance of the Work.

B. The Airline shall, as a continuing work item during the Construction Period, facilitate coordination, communication and cooperation regarding its performance hereunder with the City and DDOA. In addition, the Airline shall coordinate its efforts under this Part II of the Lease with all involved governmental and regulatory entities; provided that any required communications with the FAA for the Project shall only be undertaken by the DDOA.

C. Airline general management and oversight of the Project.

1. As between the City, DDOA, and Airline, Airline shall have the sole and exclusive right to (a) select any and all design professionals, contractors, and program management professionals as it shall reasonably require to timely and efficiently complete the Project; and (b) manage the design, construction, and operations of the Project and CMR on a day-to-day basis, which shall be exercised in accordance with all applicable laws and requirements as set forth in the Lease. Airline shall manage the Project in such a manner that the Airport operates efficiently during such construction so as to minimize disruptions to Airport operations.

D. Communications with, and Approvals by, the City and DDOA.

1. The Airline will apply and pay for all costs to obtain required permits for the Work. Where DDOA consent is required, DDOA shall not unreasonably withhold consent. To the extent the Airline is required under the Project Contract Documents to obtain approvals of the DDOA, said approvals (or denials) shall be provided by the DDOA within five (5) business days of a written request from Airline. To the extent approvals are required by the City, the Airline will obtain such approvals. DDOA agrees to assist Airline, in a reasonable manner, with obtaining such City approvals, but Airline acknowledges that DDOA cannot control the response, including response time, of other City departments. In addition to any other notice requirement set forth in this Lease, the Airline will provide the DDOA Project Manager with monthly reports concerning the ongoing construction of the Project along with appropriate supporting documentation. The DDOA Project Manager will be invited to attend (i) the DEN-Southwest Airlines Construction Coordination Meetings and (ii) any safety meetings conducted pursuant to Sections 4.2.2 and 6.2.3.4 of the CMR Agreement.

**2.07 TIME IS OF THE ESSENCE.**

The Airline, the City, and the DDOA acknowledge that the CMR Agreement requires timely and efficient performance of the Work by the CMR and that time is of the essence thereunder.

**2.08 BONDS AND INSURANCE DURING CONSTRUCTION PERIOD.**

A. Bonds Required of CMR.

1. During the Construction Period, Airline shall require payment and performance bonds from the CMR as set forth in in the form provided in **Exhibit G**. CMR shall name the City and County of Denver and the Denver Department of Aviation as dual obligees on said Bonds with the appropriate rider. Payment and performance bonds must be issued by a corporate surety authorized to do business in the State of Colorado and approved by the Mayor and the CEO. Before the Work can begin on the Project, Airline shall have furnished such surety bonds and appropriate Powers of Attorney.

B. Insurance.

1. Airline will cause its general contractors, construction managers, architects, and subcontractors to obtain the insurance required in **Exhibit I**, which shall apply only for the term of the performance of the Work during the Construction Period.

**2.09 PREVAILING WAGE REQUIREMENTS.**

A. Airline shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Airline shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered.

B. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the date the Contract was fully executed. Unless expressly provided for in this Agreement, Airline will receive no additional compensation for increases in prevailing wages or fringe benefits.

C. Airline shall provide the Auditor with a list of all subcontractors providing any services under the contract.

D. Airline shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

E. Airline shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

F. If Airline fails to pay workers as required by the Prevailing Wage Ordinance, Airline will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Airline fails to pay required wages and fringe benefits.

## **2.10 COMPLIANCE WITH MINORITY/WOMEN BUSINESS ENTERPRISES REQUIREMENTS.**

A. The Work is subject to Article III, Divisions 1 and 3 of Chapter 28, D.R.M.C., designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for the Work authorized under this Lease by the Division of Small Business Opportunity (“**DSBO**”) is 25%.

B. Under § 28-68, D.R.M.C., Airline has an ongoing, affirmative obligation to maintain for the duration of this Work, with respect to the development of the Project, at a minimum, compliance the levels of MWBE participation set forth, or required, in this Lease, unless the Airline implements a major alteration of the Project affecting MWBEs performing for the Work, or as otherwise described in § 28-70, D.R.M.C.

C. If required by DSBO, Airline shall develop and comply with a Utilization Plan in accordance with § 28-63, D.R.M.C. Along with the Utilization Plan requirements, Airline must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.

D. If this Lease is amended, Airline shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

E. If this Lease is amended to include an increase in the scope of work of the Project, which increases the dollar value of the design and construction of the Project, whether or not such change is within the scope of work designated for performance by an MWBE at the time any MWBE is hired, such amendments or modifications shall be promptly submitted to DSBO for notification purposes.

F. Those amendments or other modifications that involve a changed scope of work to design and construct the Project that cannot be performed by Airline's contractors or subcontractors are subject to the original goal. Airline shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. Airline must also satisfy the requirements under §§ 28-64 and 28-73, D.R.M.C., with regard to changes in scope or participation. Airline shall supply to the DSBO Director all required documentation described in §§ 28-64, 25-70, and 28-73, D.R.M.C., with respect to the modified dollar value or work under the Lease.

### **PART III PAYMENTS UNDER THIS LEASE**

#### **3.01 PAYMENT OF MONTHLY RENT.**

A. Rental payments for the Ground shall commence on the Effective Date. The rental fee for the Ground ("**Ground Rent**" or "**Monthly Rent**") shall be paid per month, pro-rata for any partial month, based upon the rental rates set forth in the City's Airport Rules and Regulations ("**Airport Rules**"), Part 120 Fees and Charges, at Section 120.01.09, available at the Airport website, [https://www.flydenver.com/about/administration/rules\\_regulations](https://www.flydenver.com/about/administration/rules_regulations). The current applicable rental rate under Rule 120.01.09 is \$0.87 per square foot. At the current rental rate set forth in Rule 120, the annual Ground Rent is \$83,321.21 per year, payable in monthly installments of \$6,943.43. This Ground Rent rate is subject to change as the City may update, amend or change the applicable rental rate through the Airport Rules so long as the City provides public notice of such update, amendment or change.

B. There shall be no rental fee payment owed by Airline for the Cargo Facility ("**Facility Rent**") during the Term of this Lease, it being recognized and agreed that Airline is paying all costs for the construction of the Cargo Facility in lieu of paying any Facility Rent. However, in the event Airline's possession of the Property extends in any way past the Term of this Lease, then Airline shall be required to pay Facility Rent to the City at the then-existing rate established in the Airport's Rates and Charges set forth in the Airport Rules, and based upon the final size (square feet) of the Cargo Facility, as set forth in the "as-built" plans. In this case, the Facility Rent shall be included within the term Monthly Rent.

### **PART IV PROVISIONS RELATING TO THE PROPERTY**

#### **4.01 MAINTENANCE OF THE PROPERTY.**

A. All cost of maintenance, care and necessary or appropriate replacement of any part of the Property shall be borne exclusively by the Airline during the Term of this Lease. The Airline covenants and agrees at its expense and without any cost or expense to the City, that:

1. The Airline shall keep the Property in good order and condition and will make all necessary and appropriate repairs and replacements to the Property, including, but not limited to, HVAC, roof, doors, glass, fire protection system, fiber and telecom cables (except for the line into the City managed distribution room inside the Cargo Facility and equipment in the City managed distribution room, which is the City's responsibility and which City shall be provided access upon reasonable notice or immediate access in an emergency), electrical system, plumbing system, lined detention pond, oil/water separators, pavement, and all other systems, equipment and infrastructure within the Property and exclusively serving the Property, in all cases subject to ordinary wear and tear;
2. The Airline shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health or likely to create a fire hazard or conducive to deterioration, to remain on any part of the Property or to be disposed of improperly;
3. The Airline shall provide and maintain obstruction lights and all similar equipment or devices located within the Property or serving the property within the Property now or at any time required by any applicable law, ordinance, municipal, State, or Federal regulation;
4. The Airline shall at all times maintain the Property in accordance with all applicable codes of the City, including but not limited to, the Airport Rules, as may be amended or otherwise modified from time to time;
5. The Airline shall be responsible for maintaining all FAA required lighting, signs, and markings within the Property. Airline is responsible for snow removal within the Southwest Lease Line, provided that Airline's snow removal operations shall not impede operations on the VSR; and
6. The Airline shall be responsible for all maintenance and repair of utility infrastructure (such as gas, electric, sewer and water) servicing the Property as follows:
  - a. Water: From the meter/fire tap to the Cargo Facility building;
  - b. Electrical: From the transformer in the utility yard to the Cargo Facility; and
  - c. Gas: From the high pressure gas meter in the utility yard to the Cargo Facility building.

B. Airline shall have access to City property to perform such maintenance and repair work upon reasonable advanced written notice to City (or, in an emergency, Airline shall provide notice as soon as possible).

#### 4.02 AIRLINE FIXED PROPERTY; ALTERATIONS TO THE PROPERTY.

##### A. Airline Fixed Property.

1. The Airline may, with the prior written approval of the CEO, which approval shall not be unreasonably withheld, at its own cost and expense, install in or at the Property any fixture or improvement or make alterations or do remodeling, germane to the use herein or hereafter granted. Any fixtures or improvements installed, erected or placed by the Airline in, on, or about such Property shall be deemed to be personal property and shall be and remain the property of the Airline (the “**Airline Fixed Property**”); provided that unless modified during the Term in accordance with this Section 4.02, Airline Fixed Property shall not include the Cargo Facility as built and documented in the final “as built” plans. The Airline shall have the right at any time during the term of this Lease, so long as an event of default by Airline has not occurred and is continuing under this Lease, to remove any or all of the Airline Fixed Property, subject to the Airline’s obligation to repair damage, if any, resulting from such removal. The City, acting by and through its CEO, may advise Airline in writing at the time of such installation, or not less than sixty (60) days in advance of the end of the Term, or not less than thirty (30) days in advance of the early termination of the Lease, of its willingness to accept title to the Airline Fixed Property in lieu of its removal and the subsequent restoration of the Property.
2. Any Airline Fixed Property which the City has directed the Airline to leave in place at the expiration or earlier termination of this Lease (the “**City’s Fixed Property**”) shall become the property of the City upon payment to the Airline of the balance sheet value with all applicable depreciation
3. On each annual anniversary of the Lease Effective Date after Substantial Completion of the Work, the Airline shall, upon written request from the City, provide the CEO a current list of all of the Airline Fixed Property located, used or installed on the Ground or in the Cargo Facility that was installed after Substantial Completion of the Work.

##### B. Alterations to the Property.

1. Following Substantial Completion of the Work, any improvements, alterations, and additions to the Property shall in all respects be constructed in accordance with the ordinances and any applicable code or rule and regulation of the City and County of Denver, including the Airport Rules governing tenant construction specifications and other non-technical requirements in accordance with the Denver International Airport Design Standards Manual and Denver International Airport Environmental Management System Guidelines, and in accordance with the requirements of 42 U.S.C.A. § 1210 et seq., 49 U.S.C.A. § 41705, and 14 C.F.R. § 382,

and pursuant to any required building permit to be obtained from the City and according to the customary terms and conditions thereof.

2. Following Substantial Completion of the Work, the Airline agrees that it shall include in its contracts with its general contractors, pertaining to any construction on the Property Facility, covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics and laborers according to rates and classifications established under the federal Davis-Bacon Act and Section 20-76 of the Denver Revised Municipal Code (“**DRMC**”), whichever is greater. The Airline further agrees, if requested by the City, to fully comply with the procedural requirements of Section 20-76 of the DRMC.

#### **4.03 AIRLINE PERSONAL PROPERTY.**

A. The Airline may from time to time, in its sole discretion and at its own expense, install machinery, equipment, and other personal property on or upon the Property (the “**Airline Personal Property**”). All of the Airline Personal Property shall remain the sole property of the Airline in which the City shall have no interest. The Airline Personal Property may be purchased by the Airline on conditional sale, installment purchase or lease sale contract, or subject to vendor’s lien or security agreement, as security for the unpaid portion of the purchase price thereof or in any manner desired by the Airline.

B. All of the Airline Personal Property shall be removed by the Airline at its own expense by the expiration or earlier termination of the term of the Lease. The Airline may notify the City no later than one hundred twenty (120) days prior to the date of the expiration of the Lease, or not less than ninety (90) days in advance of the early termination of the Lease, of the Airline’s desire not to remove any of the Airline Personal Property or any portion thereof and request approval from the City to allow such Airline Personal Property to remain at the Property following the Term or early expiration of this Lease. The City, acting by and through its CEO, shall notify the Airline, not less than sixty (60) days in advance of such expiration or earlier termination of the Lease, of its willingness to accept title to such of the Airline Personal Property in lieu of restoration of the Ground relating to such Airline Personal Property. If the City does not provide such approval or otherwise rejects the offer of the Airline Personal Property, then such Airline Personal Property shall be removed from the Ground as required herein.

#### **4.04 SUBLETTING, ASSIGNMENT AND GROUND HANDLING ARRANGEMENTS.**

A. No interests or rights under this Lease may be transferred except as provided in this Lease. The Airline may sublet, assign or otherwise transfer its interest in the Property, in whole or in part, to another company, subject, however, to each of the following conditions:

1. No sublease, assignment, or other transfer shall relieve the Airline from primary liability for any of its obligations under this Lease, and the Airline

shall continue to remain primarily liable for the payment of rentals, fees and charges payable under this Lease until such time as this Lease terminates in accordance with Section 5.01(A) or if the City re-lets the Ground at or above the rate established in Section 3.01. If the City re-lets the Ground for less than the rate established in Section 3.01, the Airline shall only be responsible for the difference between the new rent and the amount listed in Section 3.01;

2. The Airline shall provide written notice to the City, which notice shall include a copy of the proposed sublease, assignment, or other transfer not less than sixty (60) days prior to the proposed effective date of such arrangement;
3. Any sublease, assignment, or other transfer shall be subject to the prior written approval of the CEO, which approval shall not be unreasonably withheld, conditioned, or delayed; and
4. No sublease, assignment or other transfer hereunder to any affiliate or subsidiary corporation of the Airline shall be permitted without compliance with all of the conditions set forth in Subsections 1, 2 and 3 above.

B. Notwithstanding anything contained in Subsection (A) to the contrary, in the event Airline subleases, assigns, or transfers its interests under this Lease to another company (“**Assignee**”), Airline shall be relieved of its obligations and liabilities under the Lease if: (i) Assignee expressly assumes all of Airline’s obligations and liabilities hereunder in writing and such writing is delivered to City, and (ii) Assignee has the financial capability, as reasonably determined by the CEO to fulfill and satisfy Airline’s obligations and liabilities set forth in this Lease.

#### **4.05 RIGHT TO ENTER AND MAKE REPAIRS.**

A. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right at such times as may be reasonable under the circumstances, upon reasonable prior written notice to the Airline, provided that no written notice is required in an emergency, and with as little interruption to the Airline’s operations as is reasonably practicable, to enter upon the Property for the following purposes, it being understood and agreed that no such entry by or on behalf of the City shall cause or constitute a termination of this Lease, be deemed to constitute an interference with the possession thereof by the Airline, or be considered a trespass by City:

1. To inspect the Property at reasonable intervals during regular business hours (or at any time in case of an emergency) to determine whether the Airline has complied and is complying with the terms and conditions of this Lease with respect to the Property.
2. To perform maintenance and make repairs and replacements in any case where the Airline is obligated to do so and has failed after reasonable prior

written notice to do so, in which event the Airline shall reimburse the City for the reasonable cost thereof promptly upon demand and production by the City of documentation with respect thereto.

3. To perform maintenance and make repairs and replacements in any case where the City is obligated to do so, and in any other case where the City, in its reasonable judgment, determines that it is necessary or desirable to do so in order to preserve the structural safety of the Property or to correct any condition likely to cause injuries or damages to persons or property; provided however, that Airline will be responsible to reimburse City for City's reasonable costs under this Paragraph 4.05(A).
4. In the lawful exercise of the City's police power.

#### **4.06 ABANDONMENT OF THE PROPERTY.**

If the Airline ceases to occupy and use the Property for a period of six (6) consecutive months other than in connection with a Casualty or due to force majeure as described in Section 7.06 below, the City, acting by and through its CEO, may consider the Property, as the case may be, abandoned, and upon not less than thirty (30) days prior written notice to the Airline, may terminate this Lease. Such notice by the City shall not relieve the Airline of its obligations under this Lease related to the termination of this Lease.

#### **4.07 DESTRUCTION OF PROPERTY.**

If the Property or any portion thereof, is damaged or destroyed by fire, flood or natural disaster (a "**Casualty**"), then: (i) the Airline, after consultation and agreement with City, shall forthwith repair, reconstruct and restore the damaged or destroyed portions thereof to substantially the same condition, character, utility and value as existed prior to such Casualty, unless the City and the Airline agree that no such reconstruction is necessary or that reconstruction to some other condition, character, utility and value is appropriate or desired; or (ii) if such property is damaged to such an extent that the Property is untenable in the Airline's reasonable discretion, or less than three years remain before the expiration of the Term, then Airline may terminate the Lease, in which case Airline shall, within 180 days of its termination notice, restore the Property to the condition that existed before the Effective Date.

#### **4.08 ENVIRONMENTAL.**

##### **A. Definitions.**

1. "**Environmental Law**" means federal, state and local laws, ordinances, rules, regulations and common law related in any way to the protection of the environment, health or safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. §9601 et seq. the Resource

Conservation and Recovery Act, 42 U.S.C. §6901 et seq., whether now in effect or hereinafter enacted, promulgated, modified or amended, and including the regulations promulgated thereunder.

2. **“Hazardous Materials”** means any “hazardous material”, “hazardous substance,” “hazardous waste” “toxic substance”, “pollutant”, “contaminant,” “petroleum” and “natural gas liquids,” as those terms are defined or used in Section 101 of CERCLA or any other federal, State or local law, statute, ordinance, rule or regulation applicable to the Property, including any amendment of any of the foregoing, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos (whether encapsulated or not), urea formaldehyde, radioactive materials, and per-and polyfluoroalkyl substances.

3. An **“Airline Environmental Issue”** means any Adverse Environmental Condition for which Airline shall be primarily responsible under the terms of this Section 4.08 to remedy such Adverse Environmental Condition.

4. **“Remediation”** (or its verb form “Remediate”) means any cleanup, response, removal, remedial, corrective or other action to clean up, detoxify, decontaminate, treat, contain, prevent, cure, mitigate or otherwise remedy any release, threatened release, spill, or discharge of Hazardous Materials, and any action to comply with any Environmental Law with respect to a release, threatened release, spill or discharge of Hazardous Materials.

5. **“Adverse Environmental Condition”** means any violation of Environmental Law or any release, threatened release, spill, or discharge of contamination or hazardous materials on, at, under, from, or about the Property.

B. The Airline may store and use Hazardous Materials on and at the Property for lawful purposes in accordance with all applicable current and future laws, including Environmental Laws, in the ordinary course of the Airline’s present and future maintenance, repair, overhaul of airplanes and other permitted activities. The Airline’s use of the Property shall comply with the DEN Environmental Management System Guidelines, which is subject to periodic change. The current version of the Environmental Guidelines is available at: [https://www.flydenver.com/about/administration/environmental\\_management#guidelines](https://www.flydenver.com/about/administration/environmental_management#guidelines). Airline is responsible for keeping itself apprised of any future updated versions of the Environmental Management System Guidelines.

C. Environmental Audits. With respect to the environmental condition of the Ground, within ninety (90) days before the expiration or earlier termination of the Lease (so long as Airline has ample notice of such earlier termination of the Lease), the Airline shall obtain, at Airline’s sole cost, and provide the City with a copy of, a Phase I

Environmental Site Assessment performed in accordance with the then-existing standard for Phase I environmental site assessments (the “**Airline Phase I**”), prepared by an environmental consultant reasonably acceptable to the City and authorizing the City to rely on the Airline Phase I. In the event Airline fails to obtain the Airline Phase I, the City may obtain a Phase I Environmental Site Assessment, the cost of which shall be reimbursed by Airline within thirty (30) days of receipt from the City of the invoice(s) for the Phase I Environmental Site Assessment.

D. Remediation of Adverse Environmental Conditions.

1. Airline shall be responsible for any Adverse Environmental Conditions which occur during the Term; provided, however, that (i) Airline shall have no responsibility and liability for any contamination or Hazardous Materials which have migrated onto the Property, except to the extent the off-site release was caused by Airline or the Airline’s officers, employees, contractors, subcontractors, or agents; (ii) Airline shall have no responsibility or liability to the extent such Adverse Environmental Condition was caused by the City, or its officers, employees, contractors, subcontractors, invitees, or agents (and therefore, the City shall be responsible to the extent it caused such Adverse Environmental Condition); and (iii) Airline shall have no responsibility or liability for any Adverse Environmental Condition that occurred prior to the commencement of the Term or after expiration of the Term, unless any such Adverse Environmental Condition occurring after the expiration of the Term was directly caused by Airline.
2. If there is any sudden or accidental release or threat of release of any Hazardous Materials at the Property during the Term, then Airline shall (i) have the primary responsibility for making the appropriate initial reports to the applicable Federal, state or local administrative agency with applicable authority over the adverse environmental condition (the “**Regulator**”), and (ii) have the primary responsibility for taking the appropriate emergency actions to respond to the release or threat of release, including stopping and containing such release or threatened release.
3. Conduct of Remediation by Airline of an Adverse Environmental Condition. The following provisions shall apply when Airline is required under this Lease and any applicable Environmental Law to Remediate an Adverse Environmental Condition. All of the work required to be performed by Airline under this Section shall be at Airline’s sole cost and expense.
  - a. Airline shall be primarily responsible for making any and all required reports, including, during the Term, initial notification of any Airline Environmental Issue, to the Regulator. In the event the Airline is no longer in possession of the Property or no longer has access to the Airport, City

shall be responsible for initial notification of any Adverse Environmental Condition to the Regulator.

- b. Airline will conduct the Remediation of any Airline Environmental Issue in full compliance with all applicable Environmental Law, including when necessary, removal and proper disposal of contaminants and Hazardous Materials. Unless otherwise directed by a Regulator, Airline's Remediation shall restore the applicable contaminated soils and groundwater to non-residential cleanup standards or their equivalent. Airline will cause all such Remediation to be performed by a fully certified and licensed contractor in full compliance with applicable local, state, and federal laws, regulations, and ordinances, including Airport Rules.
- c. Airline will cause all such Remediation, including the submittal of any required periodic reports to the Regulator, to be commenced and performed within a reasonable time and with reasonable due diligence, keeping in mind Airline's business needs, until all legally applicable Remediation standards have been met and the Regulator has issued a "No Further Action Letter", or its reasonable equivalent, stating that no further Remediation is presently required under Environmental Law (a "**No Further Action Letter**").
- d. Airline shall provide the City with a copy of any environmental report prepared by Airline or its agents that is submitted to a Regulator within thirty (30) days after its submission.
- e. Airline shall provide the City with quarterly progress reports while there is any on-going Remediation being performed by Airline. The quarterly reports shall be submitted to the City on April 1, July 1, October 1 and January 5.
- f. Within ten (10) days of receiving the No Further Action letter (or its equivalent), Airline shall deliver a copy of the No Further Action letter (or its equivalent) to the City. By no later than sixty (60) days (or if more than sixty (60) days is needed to perform such action, such reasonable time period as is necessary) after Airline's receipt of the No Further Action Letter (or its equivalent), Airline shall, at its sole cost and expense, restore the Property, and any improvements located on any other portion of the Airport impacted by the Remediation, to the condition that existed before the commencement of any Remediation, reasonable wear and tear

excepted, by the Airline to address the adverse environmental condition.

- g. In the event the Airline is no longer in possession of the Property, or no longer has access to the Airport as necessary to perform Remediation, then prior to entry onto the Property to conduct such Remediation, Airline shall provide seven (7) days prior written notice to the City, which notice shall include the identity of the entities and individuals who will require access and a description of the work to be performed. Airline agrees that, prior to accessing the Property or Airport to undertake any Remediation, Airline shall provide or cause its contractors, agents and consultants to provide the City with certificates of insurance, from an insurance company licensed to do business in the State of Colorado, for each and every entity entering the Property or Airport, evidencing liability insurance in the amount of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate for personal injury and property damage, and Environmental Liability insurance and professional errors and omissions insurance with a limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) for each occurrence and in the aggregate. The City shall be named as an additional insured on all such required insurance policies.

E. The obligations set forth in Section 4.08(D) shall survive the expiration or early termination of the Lease; however, such period shall not exceed the time periods set for in the applicable statute of limitations period.

## **PART V TERM OF LEASE**

### **5.01 TERM OF LEASE.**

A. The term of this Lease shall commence on the Effective Date and shall terminate on the earlier to occur of:

1. 30 years from the Effective Date (the “**Term**”);
2. Any early termination in accordance with Sections 4.07, 5.02, 5.03, or Part IX; or
3. At the City’s or the Airline’s option, upon the date on which the Airport Use Agreement expires or is terminated in accordance with its terms.

## **5.02 TERMINATION OF LEASE BY AIRLINE.**

A. The Airline, at its option, may declare this Lease terminated upon the happening of any one or more of the following events:

1. If by reason of any action or non-action of any federal or other governmental agency having jurisdiction to grant a certificate of convenience and necessity, or similar document, authorizing the Airline to operate aircraft in or out of the Airport (including action in the nature of alteration, amendment, modification, suspension, cancellation or revocation of any such certificate, permit or document), the Airline shall cease to have authority to operate aircraft in or out of the Airport pursuant to such a certificate or document, provided that (i) such governmental action or non-action was not requested by the Airline, and the Airline made all reasonable efforts to prevent such governmental action or non-action, or in the alternate, (ii) the City had a reasonable opportunity to appear before such federal or other governmental agency and be heard in opposition to such governmental action or non-action prior to the occurrence, if it desired to do so or, in the alternate, (iii) the Airline gave the City reasonable advance notice that such governmental action or non-action was being requested or might occur, and the Airline made a reasonable effort to the end that the City might have an opportunity to appear and be heard as aforesaid; or
2. If by legislative action of the United States the Airline is deprived of such certificate or similar document; or
3. If a court of competent jurisdiction issues an injunction or restraining order against the City or any successor body to the City preventing or restraining the Airport for airport purposes in its entirety, or the use of any part thereof which may be used by the Airline and which is substantially necessary to the Airline for its operations, and if such injunction remains in force for a period of ninety (90) days or more and is not stayed by appeal or a writ of error; or
4. If the City's operation of the Airport is substantially restricted by action of any federal or other governmental agency having jurisdiction with respect thereto which substantially and adversely affects, for a period of at least ninety (90) days, the Airline's use of the Airport in the conduct of its air transportation business; provided, however, that none of the foregoing is due primarily to any fault of the Airline.

## **5.03 SURVIVAL OF CERTAIN PROVISIONS.**

Upon termination of this Lease, the parties hereto shall be relieved from all obligations hereunder except as set forth in Sections 4.08(D), 5.04, 5.05, 7.02, 7.05, 10.02, 10.10, and 10.16. The right of any party hereto to terminate this Lease shall not in any

manner affect or limit such party's right to exercise any other right or remedy it may then have under applicable law.

**5.04 SURRENDER AND HOLDING OVER.**

A. The Airline covenants that at the expiration or early termination of the Lease, it will quit and surrender such Property in good state and condition, except for reasonable wear and tear, and damage due to the negligent or willful act or omission by the City, and, except as otherwise provided in Sections 4.02 and 4.03, the Airline shall forthwith remove therefrom all of the Airline Fixed Property and the Airline Personal Property. The City shall have the right on such termination to enter upon and take possession with or without process of law, without liability for trespass.

B. Should the City allow, in writing, the Airline to hold over its use or occupancy of any portion of the Property after the expiration of the term of this Lease, such holding over shall be deemed merely a tenancy from month to month. The Monthly Rent, which will include Facility Rent, for each month of such holding over shall be paid as required by Section 3.01. All conditions as herein or hereafter provided shall remain the same, except for term.

**5.05 TERMINATION OF HOLDOVER.**

If the Airline holds over pursuant to Section 5.04, either party may, with or without cause, cancel or terminate said tenancy by giving not less than thirty (30) days prior written notice to the other party. Said notice shall set out the date of such cancellation and termination.

**PART VI  
GENERAL PROVISIONS**

**6.01 "CEO" DEFINED.**

As used in this Lease, the term the "CEO" shall mean the Chief Executive Officer of the City's Department of Aviation or the CEO's successor in function having jurisdiction over the management, operation and control of the Airport.

**6.02 CEO'S AUTHORIZED REPRESENTATIVE.**

Wherever reference is made herein to the "CEO's authorized representative", or words of similar import are used, it shall mean the Chief Financial Officer of the City's Department of Aviation or his/her successor in function (the "CFO"). The CFO shall be such authorized representative of said CEO until notice otherwise is hereafter given to the Airline.

### **6.03 AGREEMENTS WITH THE UNITED STATES.**

This Lease is subject and subordinate to the provisions of any agreements between the City and the United States relative to the operation or maintenance of the Airport, 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, or to the expenditure of federal funds for the extension, expansion or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Improvement Act of 1982, as amended. The provisions of **Appendix 1**, attached hereto, are incorporated herein.

### **6.04 BOND ORDINANCE.**

A. This Lease is in all respects subject and subordinate to any and all 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.

B. To the extent property subject to this Lease was financed by the net proceeds of tax-exempt bonds and such property is owned by the City, Airline 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. To the extent any such property is subject to this Lease, the Airline agrees to make 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.

### **6.05 LAWS, REGULATIONS AND AGREEMENTS TO BE OBSERVED; DISPUTE RESOLUTION.**

A. The Airline shall not use, or permit the use by parties authorized by the Airline, the Property, or any other portion thereof, or any part of the Airport to which it is granted a right of use or occupancy by this Lease, for any purpose or use other than those authorized by this Lease, or hereafter authorized in writing by the CEO. No use shall be considered authorized by this Lease if such use would adversely affect the tax exempt status of Airport Revenue Bonds.

B. The Airline shall comply with and shall cause its officers and employees and any other persons over whom it has control to comply with the rules and regulations governing the use of the Property and any other portion of the Airport used by the Airline pursuant to this Lease as may from time to time be adopted and promulgated by the City for the management, operation and control of the Property, including those pertaining to the operation of automobile and vehicular traffic and parking facilities thereon, and with such reasonable amendments, revisions, additions and extensions thereof as may from time to time be adopted and promulgated; provided, however, such rules and regulations shall

not be inconsistent with the rights herein granted to the Airline; provided, further, that nothing herein shall be considered to restrict the lawful police power of the City.

C. The Airline shall, at all times, faithfully obey and comply with all existing and future laws, rules and regulations adopted by federal, state, local or other governmental bodies (including without limitation the City Charter, the DRMC, City Executive Orders, and the City's fiscal rules) and applicable to or affecting the Airline and its operations and activities in and at the Airport, including the Property, and also including using the Airfield Area in accordance with the Federal Aviation Administration's flight tracks and other restrictions and limitations regarding noise emanating from departing aircraft from the Airport, as set forth in the Final Environmental Impact Statement for the New Denver Airport.

D. It is agreed and understood by the parties hereto that disputes arising under or related to this Lease shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, DRMC. The parties hereto agree that the CEO's determination resulting from said administrative hearing shall be final, subject only to the Airline's right to appeal the determination under Colorado Rule of Civil Procedure 106.

E. The Lease shall be deemed to have been made in the City and County of Denver, State of Colorado, and shall be subject to, governed by and interpreted and construed in accordance with the laws of the State of Colorado and the Charter, the DRMC, Rules, Regulations, Executive Orders and fiscal rules of the City.

## **PART VII PERFORMANCE BOND, INDEMNIFICATION AND INSURANCE**

### **7.01 GUARANTY OF PERFORMANCE.**

A. Except as otherwise provided by Airport Rules, as they may be adopted or amended from time to time, upon execution of this Lease, the Airline shall deliver to the CEO, and shall maintain in effect at all times during the term of this Lease, including a period of six (6) months after expiration or earlier termination of the Lease, a valid, corporate performance bond or an irrevocable Letter of Credit, in an amount equal to three (3) months of Monthly Rent, payable without condition to the City, with surety acceptable to and approved by the City's CEO, which bond or irrevocable letter of credit shall guarantee to the City full and faithful performance of all of the terms and provisions of this Lease to be performed by the Airline, and as said Lease may be amended, supplemented or extended.

B. Alternatively, the Airline may modify the Airport Use Agreement letter of credit or performance bond to include this Lease, deliver the same to the CEO upon the commencement of the term of this Lease and maintain modified Airport Use Agreement letter of credit or performance bond in effect at all times during the term of this Lease, including a period of six (6) months after expiration or earlier termination of the Lease.

C. Notwithstanding the foregoing, if at any time during the term hereof, the CEO reasonably deems the amount of the guaranty insufficient to properly protect the City from loss hereunder because the Airline is or has been in arrears with respect to such obligations or because the Airline has, in the reasonable opinion of the CEO, violated other terms of this Lease, the Airline agrees that it will, after receipt of reasonable, prior written notice, increase the surety bond to an amount required by the CEO in its reasonable discretion; provided however, the percentage increase in the amount of the surety bond shall not exceed the annual percentage increase that has occurred with respect to the Airline's rental and fee rates in effect under this Lease.

## **7.02 INDEMNIFICATION.**

A. Airline agrees to indemnify and save harmless the City, its officers, agents and employees, from and against (1) any and all loss of or damage to property, or injuries to, or death of, any person or persons, including property and officers, employees and agents of the City; and (2) all claims, damages, suits, costs, expense, penalties, liability, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, which in any way result from, or arise out of, Airline's operations under this Lease, or its use or occupancy of any portion of the Airport and the acts, omissions, or wrongful conduct of officers, employees, agents, contractors or subcontractors of the Airline, including without limitation, the provision or failure to provide security as herein required and the use, disposal, generation, transportation or release of Hazardous Substances at the Airport by the Airline, its contractors, employees, agents, customers, or anyone claiming or acting by or through the Airline.

B. Airline further agrees that if a prohibited incursion into the Air Operations Area occurs, or the safety or security of the Air Operations Area, the Airfield, or other sterile area safety or security is breached by or due to the negligence or willful act or omission of any of Airline's employees, agents, contractors or subcontractors and such incursion or breach results in a civil penalty action being brought against the City by the United States Government, Airline agrees to reimburse the City for all expenses, including reasonable attorneys' fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of such incursion or breach of airfield or sterile area security. The City shall notify Airline of any allegation, investigation, or proposed or actual civil penalty sought by the United States Government for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this Paragraph include but are not limited to those paid or incurred as a result of violation of Transportation Security Administration regulations, including 49 C.F.R., Subtitle B, Chapter XII, as it may be amended, or any similar law or regulations intended to replace or compliment such regulations.

C. The terms of this indemnity include an agreement by Airline to indemnify, defend and hold harmless the City from and against any and all expense, loss, claim, damage, or liability suffered by City by reason of Airline's breach of any environmental requirement existing under federal, state or local law, regulation, order or other legal requirement in connection with any of Airline's acts, omissions, operations or uses of

property relating to this Lease, or such a breach by the act or omission of any of Airline's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs actually and reasonably incurred to satisfy any applicable remediation obligation required by federal, state or local law; and reasonable legal fees and costs incurred by City in connection with enforcement of this provision, but excluding damages solely relating to diminution in value of City real property.

D. The City agrees that (1) the Airline need not save harmless or indemnify the City against damage to or loss of property, or injury to or death of persons, caused by the negligence or willful acts of the City, its officers, employees, contractors and agents, and (2) the City will give prompt written notice to the Airline of any claim or suit and the Airline shall have the right to assume the defense and compromise or settle the same to the extent of its own interest.

### **7.03 INSURANCE.**

A. At all times during the term of this Lease, the Airline is required and agrees, at its own cost and expense, to provide and keep in force for the benefit of the Airline and the City, a policy, or policies, of insurance coverage not less than the types and amount specified in **Exhibit J**. In the event that additional insurance, not specified therein, is required during the term of this Lease and available, the Airline shall supply such insurance at the City's cost. The CEO may increase the limit of insurance required when, in the CEO's reasonable discretion, he deems the amount stated herein is insufficient.

B. Such insurance policy, or policies, and certificates of insurance evidencing the existence thereof shall cover all operations of the Airline on the Property (except the coverage required and provided pursuant to federal or state law or regulation), and shall be with a company acceptable to and approved by the CEO and City Attorney, acting reasonably, and shall insure the Airline's agreement to indemnify the City as set forth in the indemnification provisions set forth in Section 7.02. The amount of insurance required hereunder shall in no way limit the liability of the Airline as provided in Section 7.02 of this Lease. The City shall be named an additional insured on all liability insurance to the extent the same is allowed under said policies. Each such policy or certificate (to the extent allowed under applicable law) shall contain a special endorsement stating "This policy will not be materially changed or altered or canceled without first giving thirty (30) days written notice by certified mail, return receipt requested, to the CEO of Department of Aviation, Denver International Airport, AOB - 9th Floor, 8500 Peña Boulevard, Denver, Colorado 80249-6340." All such policies of insurance, or copies thereof, shall be made available for review by the City at such times and places as reasonably required by the CEO. Certificates of insurance evidencing the existence of said policies shall be delivered to and left in the possession of said CEO.

C. The Airline further covenants and agrees at all times to maintain adequate Worker's Compensation Insurance in accordance with any present or future Colorado law with an authorized insurance company, or through the Colorado State Compensation

Insurance Fund, or through an authorized self-insurance plan approved by the State of Colorado insuring the payment of compensation to all its employees.

#### **7.04 LIENS.**

A. Except to the extent inconsistent with other provisions of this Lease, the Airline covenants and agrees to pay promptly all lawful taxes, excises, license fees and permit fees applicable to its operations on the Property and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon said Property, and further agrees not to permit any of said taxes, excises or license fees to become delinquent. The Airline also covenants and agrees not to permit any mechanic's, materialman's, or any other lien related to the Airline's construction of alterations, including the Cargo Facility, to be foreclosed upon the Ground and improvements thereto or thereon, or any part or parcel thereof, by reason of any work or labor performed or materials furnished at the request of the Airline by any mechanic or materialman. The Airline further covenants and agrees, except for amounts contested by the Airline, to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said business on the Airport, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Ground which will in any way impair the rights of the City under this Lease. The Airline shall have the right to contest any such mechanic's, materialman's or any other lien, and the Airline shall not, pending the termination of such contest, be obligated to pay, remove or otherwise discharge such lien or claim so long as Airline gives the City reasonable advanced notice of Airline's election to contest the lien. The Airline agrees to indemnify and save harmless the City from any loss as a result of the Airline's action as aforesaid.

B. If the Airline shall in good faith proceed to contest any such tax, assessment or other public charge, or the validity thereof, by proper legal proceedings which shall operate to prevent the collection thereof or to prevent the appointment of a receiver because of nonpayment of any such taxes, assessments or other public charges, the Airline shall not be required to pay, discharge or remove any such tax, assessment or other public charge so long as such proceeding is pending and not disposed of; provided, however, that the Airline, not less than five (5) days before any such tax, assessment or charge becomes delinquent, shall give notice to the City of the Airline's intention to contest its validity. If such notice is so given by the Airline to the City and such contest is conducted in good faith by the Airline, the City shall not, pending the termination of such legal proceedings, pay, remove or discharge such tax, assessment or other charge.

#### **7.05 LOSS OR DAMAGE TO PROPERTY.**

The City shall not be liable for any loss of property by theft, burglary, damage or Casualty at or from the Property or for any damage to person or property on the Property resulting from (i) airport operations during the term of this Lease including but not limited to operating electric lighting, (ii) wind, water, rain or snow, which may come into or issue or flow from any part of said Property, (iii) any pipes, plumbing, wiring, gas or sprinklers (iv) any Casualty, or (v) other cause whatsoever, and the Airline hereby covenants and

agrees to make no claim for any such loss or damage at any time. This Section 7.05 shall not apply to any environmental issues at the Property.

**7.06 FORCE MAJEURE.**

Neither the City nor the Airline shall be deemed to be in breach of this Lease by reason of failure to perform any of its obligations under this Lease if, while and to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, sabotage, strikes, boycotts, labor disputes, extreme weather conditions, earthquake, riots, rebellion and any circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to failures by the Airline to pay Monthly Rental or other charges, or to make any other money payment whatsoever required by this Lease, except in those cases where provision is made in this Lease for the abatement of such rents, fees, charges or payments under such circumstances.

**PART VIII  
QUIET ENJOYMENT; INCONVENIENCES DURING CONSTRUCTION**

**8.01 COVENANT OF QUIET ENJOYMENT.**

Unless an event of default shall have occurred and is continuing, and without prejudice to the City's rights available for uncured defaults by the Airline, the City covenants that the Airline shall peacefully have and quietly enjoy the Property; provided, however, it is recognized that certain temporary inconveniences may occur during construction, as described more fully in Section 8.02, below.

**8.02 INCONVENIENCES DURING CONSTRUCTION.**

The Airline recognizes that from time to time during the term of this Lease it will be necessary for the City to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Airline in its operations at the Airport. The Airline agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors and representatives by reason of minor inconvenience or minor discomfort as a result of such action and, for and in further consideration of the Lease, the Airline waives any right to claim damages or other consideration for such minor inconvenience or minor discomfort except to the extent caused by the City's negligence or willful misconduct.

## **PART IX EVENTS OF DEFAULT AND REMEDIES**

### **9.01 EVENTS OF DEFAULT DEFINED.**

A. The occurrence of any one or more of the events described in the following subsections (1) through (4) of this Section 9.01 shall constitute a “**default**” for all purposes of this Lease; and each such default shall, after the giving of notice, if any, passage of time, if any, or occurrence of an event, if any, specified in the subsection describing such default, constitute an “event of default” for all purposes of this Lease:

1. Failure by the Airline to pay when due any Monthly Rental required to be paid under Part III, after fifteen (15) days’ written notice and an opportunity to cure.
2. Any material breach by the Airline of any of its representations or warranties made in this Lease, any failure by the Airline to make any payment required to be made by it hereunder (other than a failure to pay any Monthly Rental, which is addressed at Section 9.01(A)(1)) or any failure by the Airline to observe and perform any of its covenants, conditions or agreements made on its part to be observed or performed hereunder, for a period of thirty (30) days after written notice specifying such breach, failure to pay or failure to observe and perform and requesting that it be remedied, given to the Airline by the City in writing, unless (i) the City shall agree in writing to an extension of such time prior to its expiration or (ii) if the breach, failure to pay or failure to observe and perform be such that it can be corrected but cannot be corrected within the applicable period, corrective action is instituted by the Airline within the applicable period and is being diligently pursued.
3. The dissolution or liquidation of the Airline; or the filing by the Airline of a voluntary petition in bankruptcy; or the entry of an order for relief under Title 11 of the United States Code, as the same may from time to time be hereafter amended, against the Airline; or the filing of a petition or answer proposing the entry of an order for relief against the Airline under Title 11 of the United States Code, as the same may from time to time be hereafter amended, or proposing the reorganization, arrangement or debt readjustment of the Airline under any present or future federal bankruptcy act or any similar federal or state law in any court and the failure of said petition or answer to be discharged or denied within ninety (90) days after the filing thereof; or the appointment of a custodian (including without limitation a receiver, trustee or liquidator of the Airline) of all or a substantial part of the property of the Airline, and the failure of such a custodian to be discharged within ninety (90) days after such appointment; or the taking by such a custodian of possession of the Airline or a substantial part of its property, and the failure of such taking to be discharged within ninety (90) days after such taking; or the Airline’s consent to or

acquiescence in such appointment or taking; or assignment by the Airline for the benefit of its creditors; or the entry by the Airline into an agreement of composition with its creditors.

4. Any other breach by the Airline of any provision of the Airport Use Agreement for a period of thirty (30) days after written notice from the City specifying such breach and requesting that it be remedied, (i) unless the City shall agree in writing to an extension of time or (ii) unless such breach is such that it can be corrected but cannot be corrected within the applicable time period and corrective action is instituted by the Airline within the applicable time period and is being diligently pursued; provided, however, that if any breach has resulted in a termination of the Airport Use Agreement in accordance with its terms, this Lease shall, at the City's or the Airline's option, terminate in accordance with Section 5.01 hereof upon the termination of the Airport Use Agreement.

## **9.02 REMEDIES ON EVENTS OF DEFAULT.**

A. Whenever any event of default referred to in Section 9.01 shall have happened and be continuing, the City shall have the right, at the City's election, then or at any time thereafter until such event of default has been cured or obviated, and subject to Section 9.03, to exercise any one or more of the following remedies:

1. The City may terminate this Lease, effective at such time as may be specified by written notice to the Airline, and demand (and, if such demand is refused, recover) possession of the Ground from the Airline. The City shall, by notice in writing to the Airline upon the occurrence of an event of default described in Section 9.01 hereof, declare all Monthly Rentals payable under this Lease to be due and payable immediately, and upon any such declaration the Monthly Rentals shall become and be immediately due and payable; provided, however, that the City shall not be required to take any action under this Section 9.02(A) with respect to an event of default under Section 9.01 hereof;
2. The Airline shall remain liable to the City for damages in an amount equal to the Monthly Rentals and other payments required to be paid under this Lease and any other sums which would have been owing by the Airline hereunder for the balance of the term;
3. The City may reenter and take possession of the Ground or any part thereof, without demand or notice to the extent allowed by law, and repossess the same and expel the Airline and any party claiming by, under or through the Airline, and remove the effects of both using such force for such purposes as may be necessary, to the extent allowed by law, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such

reentry or taking possession of the Ground by the City shall be construed as an election by the City to terminate this Lease unless a written notice of such intention is given to the Airline. No notice from the City hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by the City to terminate this Lease unless such notice specifically so states. The City reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving the Airline such written notice, in which event the Lease will terminate as specified in said notice. After recovering possession of the Ground, the City shall use commercially reasonable efforts to relet the Ground for such term or terms and on such conditions and upon such other terms as the City, in its sole reasonable discretion, may determine. The City may make such repairs, alterations or improvements as the City may consider appropriate to accomplish such reletting, and the Airline shall reimburse the City upon demand for all costs and expenses, including reasonable attorneys' fees, which the City may incur in connection with such reletting. The City may collect and receive the rents for such reletting, but the City shall in no way be responsible or liable for any failure to relet the Ground following the use of commercially reasonable efforts to do so, or for any failure to collect any rent due upon such reletting. Notwithstanding the City's recovery of possession of the Ground, the Airline shall continue to pay on the dates herein specified, the rental payments payable under Part III hereof and other amounts which would be payable hereunder if such repossession had not occurred.

B. The City may take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of the Airline under this Lease.

### **9.03 NO REMEDY EXCLUSIVE.**

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **PART X MISCELLANEOUS PROVISIONS**

### **10.01 LEASE BINDING.**

This Lease shall be binding on and extend to any successors of the respective parties hereto.

## **10.02 CITY PROPRIETARY OR CONFIDENTIAL INFORMATION.**

The Airline understands and agrees that, in performance of the Work, the Airline may have access to private or confidential information that may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. The Airline agrees that all non-public information disclosed by the City to the Airline shall be held in confidence and used only in performance of the Lease or Airline's other operations at the Airport. The Airline shall exercise the same standard of care to protect such information as a reasonably prudent Airline would to protect its own proprietary data.

## **10.03 PARAGRAPH HEADINGS AND INDEX.**

The paragraph or Section headings and index or table of contents contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

## **10.04 CONDUCT OF CONTRACTOR'S PERSONNEL.**

A. All contractors or subcontractors hired by Airline, including CMR, must conduct themselves in an orderly and disciplined manner while engaged in the performance of the Project both on and off of the Ground. The DDOA expects and will demand that the Airline enforce acceptable and appropriate conduct by all contractors or subcontractors to enhance job and public safety and to present to the public the best possible image of City and DDOA construction activities.

B. Should any employees or agents of contractors or subcontractor, including CMR, behave in a disorderly manner or be abusive to others by language or actions while engaged in the performance of the Project either on or off the Ground or the Temporary Access Property, and if the Airline fails to properly discipline the offender and provide satisfactory assurance that such behavior will not recur, the City or DDOA is authorized to demand that the Airline no longer assign the offender to the Project. Upon such written demand, the Airline shall promptly remove that individual from the Project.

## **10.05 LEASE DOCUMENTS; ORDER OF PRECEDENCE.**

A. This Lease consists of Articles I through X which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference (the "**Lease Documents**"):

<b>Appendix 1</b>	Standard Federal Assurances
<b>Exhibit A</b>	Lease Legal Description
<b>Exhibit B</b>	Survey of Cargo Facility Lease Area
<b>Exhibit C</b>	Current Facility Plans
<b>Exhibit D</b>	CMR Agreement
<b>Exhibit E</b>	Airline QA/QC Matrix
<b>Exhibit F</b>	Airline Construction Safety and Phasing Plan

<b>Exhibit G</b>	Form of CMR Performance and Payment Bonds
<b>Exhibit H</b>	Certificate of Completion
<b>Exhibit I</b>	Insurance Requirements - Construction
<b>Exhibit J</b>	Insurance Requirements – Facility Operation

B. In the event of an irreconcilable conflict between a provision of Articles I through X and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

<b>Appendix 1</b>	Standard Federal Assurances
<b>Exhibit A</b>	Survey of Cargo Facility Lease Area
<b>Exhibit B</b>	Lease Legal Description
<b>Exhibit G</b>	Form of CMR Performance and Payment Bonds
<b>Exhibit I</b>	Insurance Requirements - Construction
<b>Exhibit J</b>	Insurance Requirements – Facility Operation
<b>Exhibit C</b>	Current Facility Plans
<b>Exhibit D</b>	CMR Agreement
<b>Exhibit E</b>	Airline QA/QC Matrix
<b>Exhibit F</b>	Airline Construction Safety and Phasing Plan
<b>Exhibit H</b>	Certificate of Completion

#### **10.06 SIGNS.**

The Airline agrees that no signs or advertising displays shall be painted on or erected in any manner upon the Ground or Cargo Facility without the prior written approval of the City’s CEO or the CEO’s authorized representative which consent shall not be unreasonably withheld, conditioned or delayed; and that signs identifying the Airline will conform to reasonable standards established by the CEO, or the CEO’s authorized representative, with respect to type, size, design, location and content. Notwithstanding the foregoing, the Airline shall have the right to, at its own expense, install a sign, approximately equal in size to the existing sign, subject to the approval of the City, such approval not to be unreasonably withheld, and subject also to any limitations in place from federal regulatory entities.

#### **10.07 VENDING MACHINES.**

The Airline may, with the written authorization of the CEO which shall not be unreasonably withheld, permit the installation of vending machines, in the Cargo Facility. To the extent installed, the Airline shall make no charge to the concessionaire for the privilege of installing or maintaining such machines, except that if the Airline provides the electric current or water to the concessionaire a reasonable charge may be made to cover the cost of the electricity and water consumed, and all fees paid by the concessionaire for the privilege shall be the property of the City. Nothing in this Section 10.07 shall prohibit the Airline, or its officers, employees, agents, contractors and invitees, from operating cell

phones, computers and similar business or personal equipment on and within the Cargo Facility.

**10.08 PURCHASES BY AIRLINE.**

Property, services and materials (except as otherwise provided in this Lease) may be purchased or otherwise obtained by the Airline from any person or corporation of its choice and no unjust, or unreasonable discriminatory limitations, restrictions, charges or conditions shall be imposed by the City, directly or indirectly, against the Airline or its suppliers for the privilege of purchasing, selling, using, storing, withdrawing, handling, consuming, loading, unloading or delivering any personal property of the Airline, by the Airline or its suppliers, or for the privilege of transporting such personal property to, from or on the Airport.

**10.09 NON-DISCRIMINATION.**

A. The Airline, for itself, its successors and assigns, as a part of the consideration of this Lease does hereby agree as follows:

1. As more fully set forth in Appendix 1 attached hereto and incorporated herein by reference, if facilities are constructed, maintained or otherwise operated on the Ground for purposes in which federal financial assistance is extended under a Department of Transportation program or activity, or for another purpose involving the provision of a similar service or benefit, the Airline shall maintain and operate the Property and services in compliance with all requirements of 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
2. The Airline will, in all of its operations and activities in and at the Property, comply with all applicable requirements of the Air Carrier Access Act, 49 U.S.C.A. § 41705, and regulations implementing such Act at 14 C.F.R. Part 382, and the Americans with Disabilities Act, 42 U.S.C.A. § 12101 *et seq.*, and all regulations implementing such Act.

**10.10 NO PERSONAL LIABILITY.**

No director, officer or employee of either party shall be held personally liable under this Lease or because of its execution or attempted execution.

**10.11 NOTICES.**

A. All notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to:

Chief Executive Officer  
Department of Aviation  
Denver International Airport  
AOB - 9th Floor  
8500 Peña Boulevard  
Denver, Colorado 80249-6340

With a copy to:

Chief Financial Officer  
Department of Aviation  
Denver International Airport  
AOB - 9th Floor  
8500 Peña Boulevard  
Denver, Colorado 80249-6340

And

DEN Legal  
AOB – 9th Floor  
8500 Peña Boulevard  
Denver, CO 80249-6340

All notices required to be given to the Airline hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to:

Southwest Airlines Co.  
2702 Love Field Drive, HDQ/4PF  
Dallas, Texas 75235-169311  
Attn: Airport Affairs Representative

B. Provided that the parties or either of them, may designate in writing from time to time the addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Airline or said CEO.

**10.12 PLACE AND MANNER OF PAYMENTS.**

A. In all cases where the Airline is required by this Lease to pay Monthly Rental to the City, such payments shall be due and payable without notice and shall be made at the office of the Airport Revenue Fund, Denver International Airport, P.O. Box 492065, Denver, Colorado 80249-2065 or at such other place in the City and County of Denver as the City may hereafter designate by notice in writing to the Airline, and shall be made in legal tender of the United States. Any check shall be received by the City subject to collection, and the Airline agrees to pay any bank charges for the collection of any such check.

B. Any payment not made to the City or the Airline when due shall accrue interest at the rate of eighteen percent (18%) per annum commencing five (5) business days after such due date.

### **10.13 SEVERABILITY.**

In the event any covenant, condition or provision contained in this Lease is held by any court of competent jurisdiction to be invalid, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained if the invalidity of any such covenant, condition or provision does not materially prejudice either party hereto in its respective rights and obligations contained in the valid covenants, conditions or provisions in this Lease.

### **10.14 SECURITY.**

A. It is understood and agreed by the Airline that in addition to the Airline's responsibilities to maintain the Property as stated in Section 4.01, it shall take reasonable security precautions to maintain the Property in a manner as to keep it secure from unauthorized intrusion and shall with respect to any area of the Property opening to an Air Operations Area of the Airport provide for an adequate security system designed to prevent unauthorized persons or vehicles from entering such Air Operations Area. An "**Air Operations Area**" is defined to mean any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft. An "adequate security system" is further defined as providing for security at a standard no less than required and set out in Transportation Security Administration regulations, including 49 C.F.R., Subtitle B, Chapter XII, as it may be amended, or any similar law or regulations intended to replace or compliment such regulations.

B. It is further understood and agreed by the Airline that at any time during the term of this Lease when requested in writing by the CEO, or their authorized representative, the Airline shall submit to the CEO the security plans that are to be used and are being used by the Airline on any or all of the Ground or Cargo Facility.

### **10.15 WAIVERS.**

A. No waiver of default by either party of any of the terms, covenants or conditions of this Lease to be performed, kept and observed by the Airline or the City shall be construed, or operate, as a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained to be performed, kept and observed by the Airline or the City.

B. The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Airline of any term, covenant or condition of this Lease other than the failure of the Airline to pay the particular rental so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent.

#### **10.16 AIRLINE BOOKS AND RECORDS.**

The Airline agrees that the CEO and the Auditor of the City or any of their duly authorized representatives, until the expiration of three (3) years after the termination of this Lease, shall have the right, at any reasonable time and at their own expense, to have access to and the right to examine any books, documents, papers and records of the Airline pertinent to this Lease. The Airline, upon request by either, shall make all such books and records available for examination and copying in Denver.

#### **10.17 CITY SMOKING POLICY.**

The Airline and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99, or any successor executive order prohibiting smoking in all indoor buildings and facilities. The Airline agrees that it will take reasonable actions to prohibit smoking by its employees and the public in the Cargo Facility except in specially designated areas.

#### **10.18 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.**

The Airline and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 94 and Attachment A thereto, or any successor executive order concerning the use, possession or sale of alcohol or drugs.

#### **10.19 THIRD PARTIES.**

This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (excepting parties to whom the Airline may assign this Lease or may sub-lease any part or all of the Property in accordance with Section 4.04, and excepting any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Airline because of any breach of this Lease or because of any of the terms, covenants, agreements and conditions herein contained.

#### **10.20 MASTER PLAN.**

Airline agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport and waives any right to claim damages or other consideration arising therefrom.

#### **10.21 CITY NON-DISCRIMINATION.**

In connection with the performance of its obligations under this Lease, the Airline agrees not to fail or refuse to hire, nor to discharge, promote or demote, nor to otherwise discriminate in matters of compensation, terms, conditions or privileges of employment 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 the Airline further agrees to insert the foregoing provision in all subcontracts hereunder.

**10.22 PAYMENT OF MINIMUM WAGE.**

Airline shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 DRMC, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing DRMC Sections. By executing this Lease, Airline expressly acknowledges that Airline is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Airline, or any other individual or entity acting subject to this Lease, to strictly comply with the foregoing DRMC Sections shall result in the penalties and other remedies authorized therein.

**10.23 ENTIRE LEASE.**

The provisions contained in this Lease constitute the entire agreement and understanding between the parties with respect to the subject matter thereof. The parties agree that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. This Lease cannot be changed or terminated orally. No alterations, amendments, changes or modification shall be valid unless executed by an instrument in writing by both parties hereto with the same formality as this Lease.

**10.24 SALE OF FOOD AND BEVERAGES.**

Upon written approval by the CEO's Authorized Representative, the Airline may sell, or permit the sale of food, food products or beverages upon the Property on its own behalf or by a concessionaire selected by the Airline. Airline agrees to pay the same rates, fees and charges that would be applicable to an Airport concessionaire with respect to the sale of such products.

**10.25 CONDITION; FINAL APPROVAL.**

This Lease is expressly subject to, and shall not be or become effective or binding on the City until approved by Denver City Council and fully executed by all signatories of the City and a fully executed copy has been delivered to the Airline. This Lease shall not be binding on the Airline until it is binding on the City. The date of the final City Signature as reflected in the City's signature page below shall be the Effective Date.

**10.26 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.**

The Parties agree to the use of electronic signatures. This Lease may be signed electronically by either Party in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Lease solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object

to the admissibility of the Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**10.27 CONFLICT OF INTEREST.**

The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the City further agrees not to hire or contract for services with any official, officer or employee of the City or any other person which would be in violation of the DRMC Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

**[SIGNATURE PAGE FOLLOWS]**

**Contract Control Number:** PLANE-202262387-00  
**Contractor Name:** SOUTHWEST AIRLINES, CO.

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PLANE-202262387-00  
SOUTHWEST AIRLINES, CO.

By: DocuSigned by:  
*Stephen Sisneros*  
3BFG8834DBBE4A5...

Name: Stephen Sisneros  
(please print)

Title: Vice President - Airport Affairs  
(please print)

ATTEST: [if required]

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

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

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

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Airline, 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 shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall 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 Regulations, orders, 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 of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall 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 the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such 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, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall 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 grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

#### **9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

The Airline assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit A**  
**Lease Legal Description**

**EXHIBIT "A"**

**LEGAL DESCRIPTION FOR THE CARGO FACILITY LEASE AREA**

Date: November 8, 2022

A parcel of land situated in the Southeast Quarter of Section 33, Township 2 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Bearings used in this legal description are based on the east line of said Southeast Quarter of Section 33, which bears North 00°05'53" West, a distance of 2644.01 feet, described monuments.

Commencing at the East Quarter corner of said Section 33;

Thence South 87°17'24" West, a distance of 1577.35 feet to the Point of Beginning of Parcel-CARGO;

Thence North 72°41'50" West, a distance of 13.70 feet;

Thence North 89°28'19" West, a distance of 179.00 feet;

Thence South 00°31'41" West, a distance of 386.29 feet;

Thence South 45°33'38" West, a distance of 16.85 feet;

Thence North 89°24'26" West, a distance of 237.85 feet;

Thence South 00°31'41" West, a distance of 27.22 feet to a point of a non-tangent curve;

Thence along the arc of a non-tangent curve to the right, said curve having a radius of 37.77 feet, an arc length of 35.11 feet and a central angle of 53°15'52", the chord bears South 65°29'32" East, a distance of 33.86 feet;

Thence South 37°53'25" East, a distance of 16.65 feet to a point of a tangent curve;

Thence along the arc of a tangent curve to the left, said curve having a radius of 18.50 feet, an arc length of 21.61 feet and central angle of 66°55'45", the chord bears South 71°21'17" East, a distance of 20.40 feet;

Thence North 00°35'34" East, a distance of 17.69 feet;

Thence South 89°24'26" East, a distance of 352.54 feet;

Thence South 00°35'34" West, a distance of 10.48 feet;

Thence South 89°24'26" East, a distance of 23.67 feet;

Thence South 00°31'41" West, a distance of 10.48 feet;

Thence South 89°24'26" East, a distance of 5.00 feet;

Thence North 00°31'41" East, a distance of 458.04 feet to the Point of Beginning.

Said Parcel G.U.B. contains 95,771.50 square feet or 2.20 acres more or less

See Exhibit "B"

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit B**  
**Survey of Cargo Facility Lease Area**



**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit C**  
**Current Facility Plans**

EXHIBIT C

# SOUTHWEST AIRLINES AIRPORT SUPPORT AND FACILITIES PLANNING CARGO FACILITY

27555 E 75th Ave Denver, CO 80249 USA

Contract No. IT-01717

Legal Description: Support, Flight Kitchen, Cargo Facility & Exc A

Parcel For AMR Combs Lease Area & Exc A

## ISSUED FOR 60%

ISSUE DATE: 11/09/2022

no.	date	by	ckd	description
A	08/25/22	MS	NT	30% DESIGN
B	11/09/22	CR	NT	60% DESIGN



**BURNS  
MEDONNELL**  
9785 MAROON CIRCLE, SUITE 400  
CENTENNIAL, COLORADO 80112

date	11/09/2022	detailed	EM
designed	CR	checked	NT

**Southwest**  
DENVER INTERNATIONAL AIRPORT  
27555 E 75TH AVE  
DENVER, CO 80249

**AIRPORT SUPPORT & FACILITIES PLANNING  
CARGO FACILITY  
COVER SHEET**

project	146206	contract	IT-01717
drawing	<b>1NCOV-001 -</b>		<b>B</b>
sheet	1	of	161 sheets
file			

**PRELIMINARY - NOT  
FOR CONSTRUCTION**



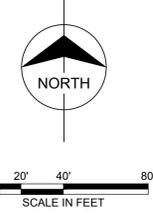
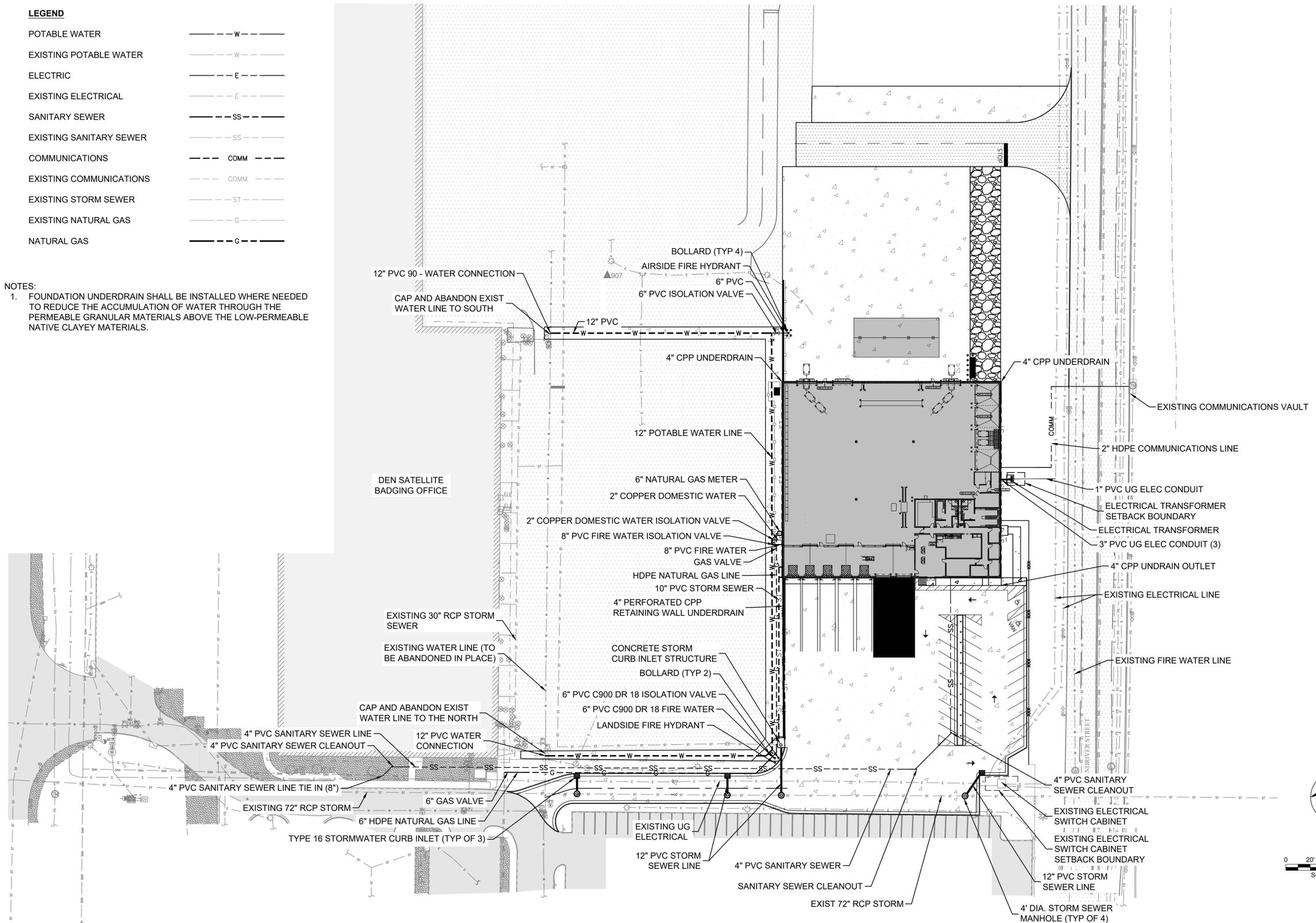
**LEGEND**

POTABLE WATER	---	W	---
EXISTING POTABLE WATER	---	W	---
ELECTRIC	---	E	---
EXISTING ELECTRICAL	---	E	---
SANITARY SEWER	---	SS	---
EXISTING SANITARY SEWER	---	SS	---
COMMUNICATIONS	---	COMM	---
EXISTING COMMUNICATIONS	---	COMM	---
EXISTING STORM SEWER	---	ST	---
EXISTING NATURAL GAS	---	G	---
NATURAL GAS	---	G	---

NOTES:  
 1. FOUNDATION UNDERDRAIN SHALL BE INSTALLED WHERE NEEDED TO REDUCE THE ACCUMULATION OF WATER THROUGH THE PERMEABLE GRANULAR MATERIALS ABOVE THE LOW-PERMEABLE NATIVE CLAYEY MATERIALS.

Millimeters  
 Scale For Microfitting

Inches



**PRELIMINARY - NOT FOR CONSTRUCTION**

no.	date	by	ckd	description
A	08/25/22	MS	NT	30% DESIGN
B	11/09/22	CR	NT	60% DESIGN

**BURNS & MCDONNELL**  
 9785 MAROON CIRCLE, SUITE 400  
 CENTENNIAL, COLORADO 80112

date	11/09/2022	detailed	EM
designed	CR	checked	NT

**Southwest**  
 DENVER INTERNATIONAL AIRPORT  
 27555 E 75TH AVE  
 DENVER, CO 80249

**AIRPORT SUPPORT & FACILITIES PLANNING  
 CARGO FACILITY  
 UTILITY PLAN**

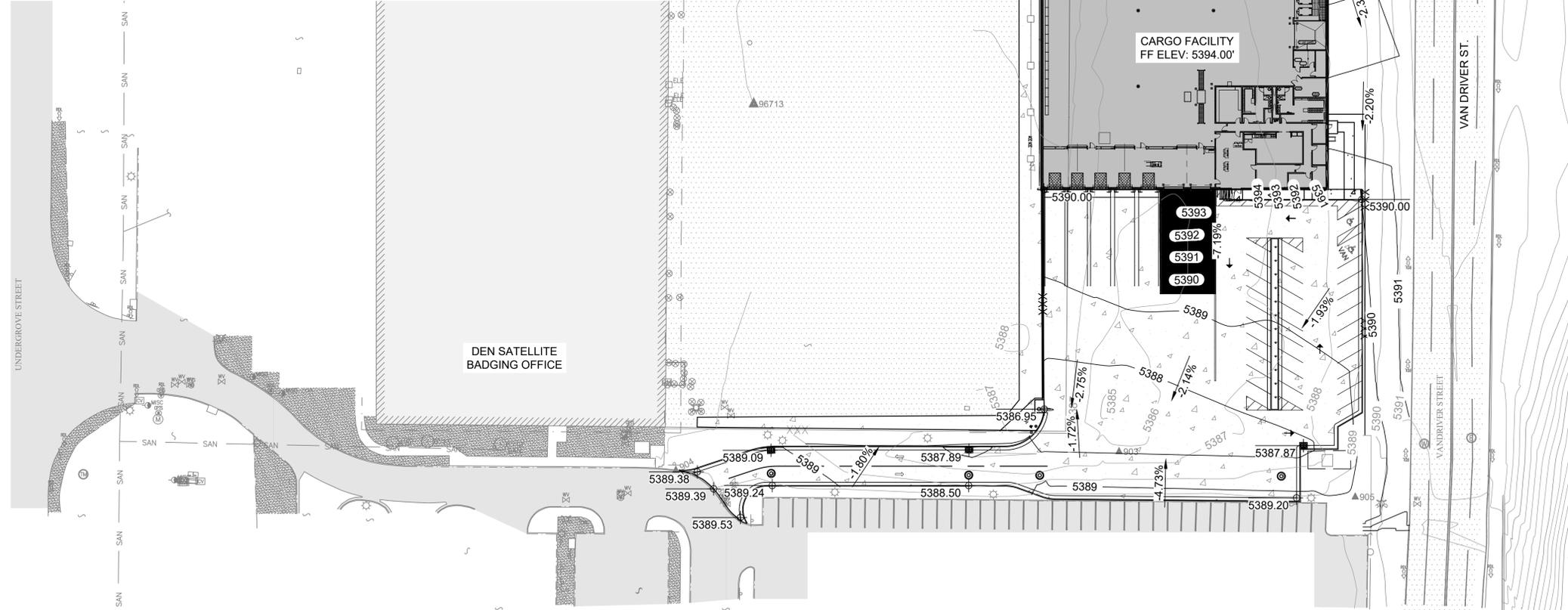
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drawing	<b>1CUTP-101 - B</b>		rev.
sheet	11	of	161 sheets
file			

**LEGEND**

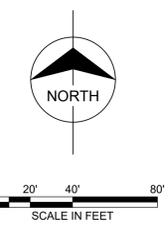
EXISTING CONTOUR ——— 3700 ———  
 PROPOSED CONTOUR ——— 3700 ———

EARTHWORK QUANTITIES	
CUT (CY)	100
FILL (CY)	16,150
NET CUT/FILL (CY)	16,050 (FILL)

- NOTES:**
- EARTHWORK QUANTITIES DO NOT INCLUDE 5' EXCAVATION, RECONDITIONING, AND RECOMPACTION.
  - EARTHWORK QUANTITIES ASSUME A FILL FACTOR OF 1.2



**PRELIMINARY - NOT FOR CONSTRUCTION**



no.	date	by	ckd	description
A	11/09/22	CR	NT	60% DESIGN

**BURNS & MCDONNELL**  
 9785 MAROON CIRCLE, SUITE 400  
 CENTENNIAL, COLORADO 80112

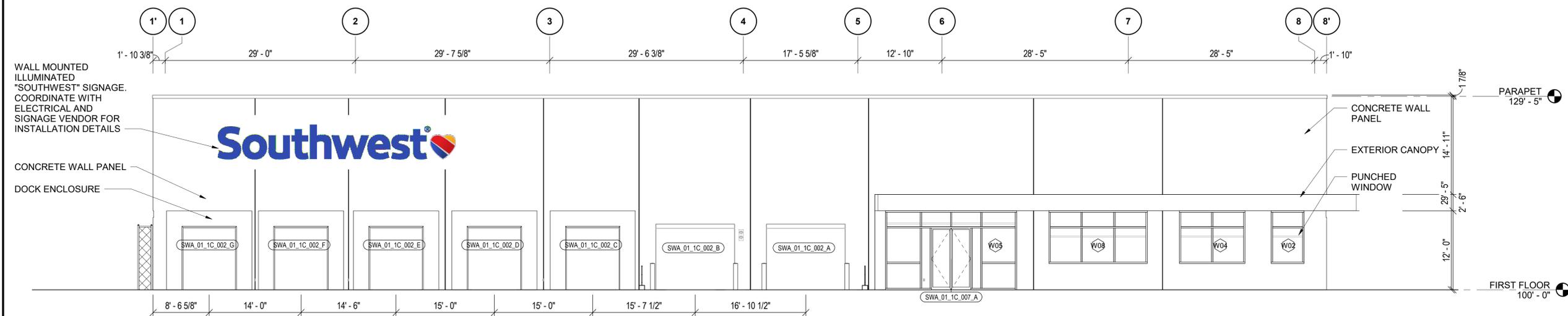
date	11/09/2022	detailed	EM
designed	CR	checked	NT

**Southwest**  
 DENVER INTERNATIONAL AIRPORT  
 27555 E 75TH AVE  
 DENVER, CO 80249

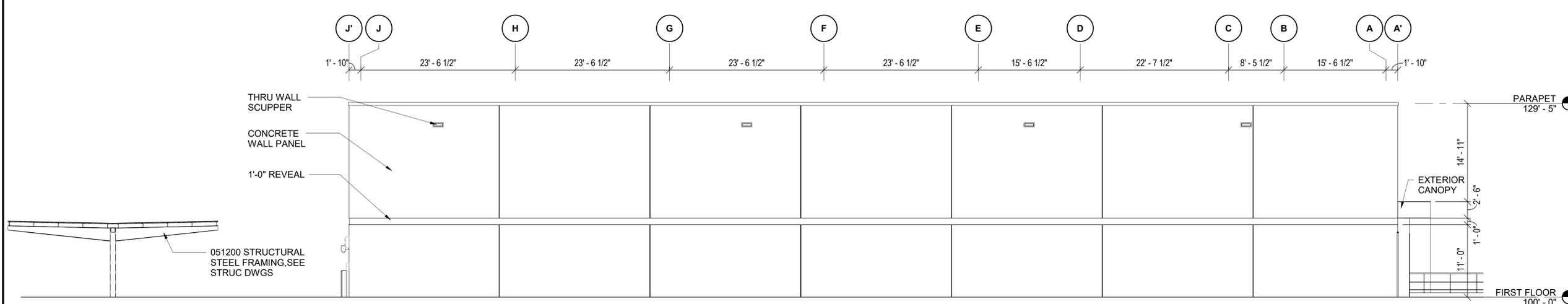
**AIRPORT SUPPORT & FACILITIES PLANNING  
 CARGO FACILITY  
 GRADING & DRAINAGE PLAN**

project	146206	contract	IT-01717
drawing	<b>1CGRA-101</b>	rev.	<b>B</b>
sheet	18	of	161 sheets
file			



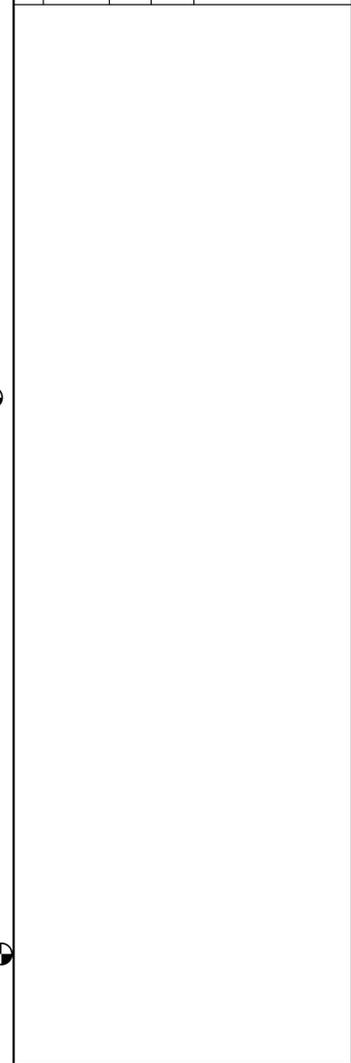


1 SOUTH ELEVATION  
A-202  
1/8" = 1'-0"



2 WEST ELEVATION  
A-202  
1/8" = 1'-0"

no.	date	by	ckd	description
A	08/25/22	JLH	SEP	30% DESIGN
B	11/09/22	JLH	SEP	60% DESIGN



**BURNS  
MCDONNELL**  
ARCHITECTURE P.C.  
9785 MAROON CIR #400  
CENTENNIAL, CO  
BMCD LICENSE NO

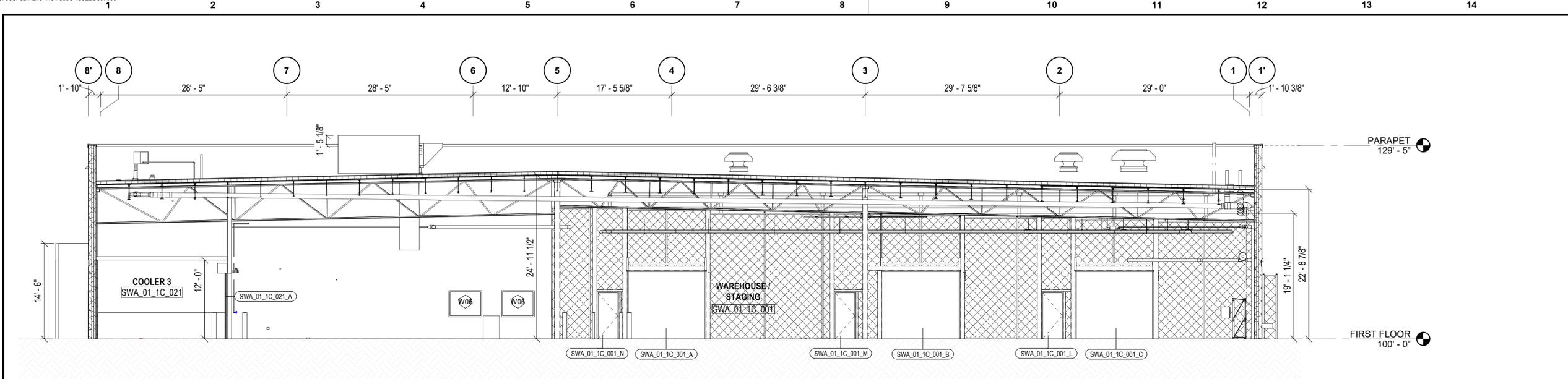
date	08/16/22	detailed	JLH
designed	JLH	checked	SEP

**Southwest**  
DENVER INTERNATIONAL AIRPORT  
27555 E 75th Ave  
Denver, CO 80249

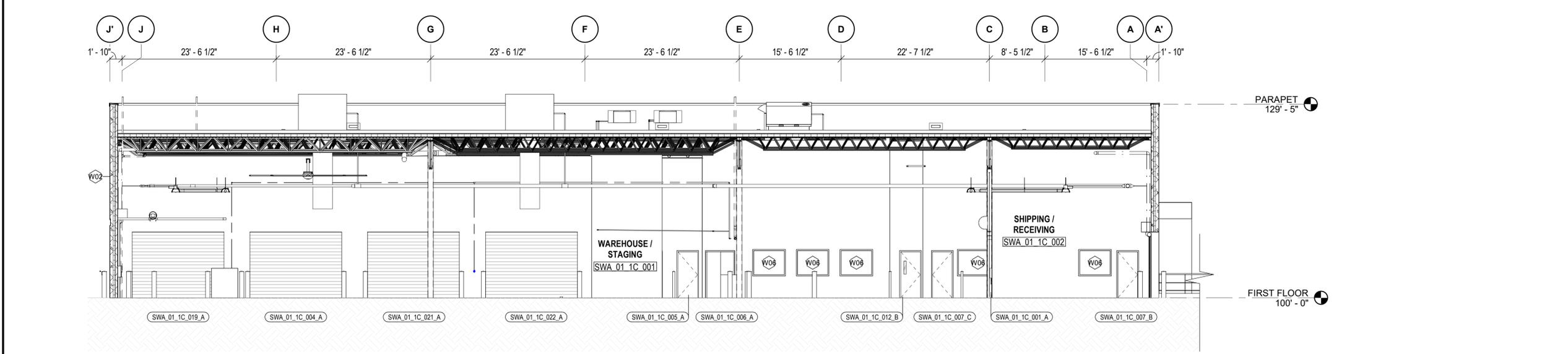
SWA DENVER CARGO FACILITY  
EXTERIOR BUILDING ELEVATIONS

**PRELIMINARY -  
NOT FOR  
CONSTRUCTION**

project	146206	contract	CONTRACT
drawing		rev.	<b>A-202 - B</b>
sheet		of	sheets
file	146206_A_CENTRAL		



1 SECTION WEST  
1/8" = 1'-0"



2 SECTION SOUTH  
1/8" = 1'-0"

no.	date	by	ckd	description
A	08/25/22	JLH	SEP	30% DESIGN
B	11/09/22	JLH	SEP	60% DESIGN

**BURNS  
MCDONNELL**  
ARCHITECTURE P.C.  
9785 MAROON CIR #400  
CENTENNIAL, CO  
BMCD LICENSE NO

date	08/24/22	detailed	JLH
designed	JLH	checked	SEP

**Southwest**  
DENVER INTERNATIONAL AIRPORT  
27555 E 75th Ave  
Denver, CO 80249

**SWA DENVER CARGO FACILITY**  
BUILDING SECTIONS

**PRELIMINARY -  
NOT FOR  
CONSTRUCTION**

project	146206	contract	CONTRACT
drawing		rev.	
sheet		of	sheets
file	146206_A_CENTRAL		

A  
B  
C  
D  
E  
F  
G  
H  
I  
J

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit D**  
**CMR Agreement**

**EXHIBIT D**

**CONSTRUCTION MANAGER AT RISK (“CMR”) AGREEMENT  
FOR PRECONSTRUCTION AND CONSTRUCTION SERVICES**

**FOR THE  
NEW DENVER CARGO FACILITY**

**SOUTHWEST AIRLINES CO.  
NEW CARGO FACILITY  
Denver International Airport  
Denver, Colorado**

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT (“Agreement”) is made and entered into this 28 day of July, 2022 (“Effective Date”) by and between:

**SOUTHWEST AIRLINES CO.**  
2702 Love Field Drive  
Dallas, Texas 75235

and

**MCCARTHY BUILDING COMPANIES, INC.**  
2401 15<sup>th</sup> Street, Suite 350  
Denver, Colorado 80202

for Preconstruction and Construction Services related to the

**SOUTHWEST AIRLINES CO. CARGO FACILITY** (the “Project”)  
Denver International Airport (the “Airport”)  
8500 Peña Blvd.  
Denver, CO 80249

The Architect is:

**BURNS & McDONNELL ENGINEERING, CO. INC.**  
9400 Ward Parkway  
Kansas City, MO 64114

In consideration of the mutual covenants and obligations contained herein, SOUTHWEST AIRLINES CO. (“Southwest”) and MCCARTHY BUILDING COMPANIES, INC. (“CMR”) agree as set forth herein.

The parties understand and acknowledge that Southwest and the City and County of Denver acting for and on behalf of its Department of Aviation (the “City”) intend to enter into a lease or other agreement that may include requirements relevant to the construction of the Project. The Project includes the construction of site and facility improvements for a new cargo facility located on an approximately 83,990 SF site which will include a new LEED certified cargo building of approximately 23,640 SF, site access, parking, and staging, and which shall all be located within the leased area. CMR shall generally coordinate all Project efforts with Southwest and its consultants such that Southwest may meet all requirements imposed upon Southwest in any subsequent lease or other agreement between Southwest and the City. Except as expressly excluded by the terms of this Agreement, the CMR shall be bound by and shall comply with the provisions and requirements pertaining to the CMR and/or construction activities for the Project as set forth in any subsequent lease or other agreement or any other Contract Documents.

This Agreement contains the following Articles:

Article 1 Scope of Work .....	2
Article 2 Contract Documents .....	3
Article 3 Interpretation and Intent .....	4
Article 4 Preconstruction Phase Services .....	7
Article 5 Development of Guaranteed Maximum Price .....	15
Article 6 Construction Phase Services .....	19
Article 7 Contract Time .....	27

Article 8 Compensation for Construction Phase Services ..... 29  
Article 9 Costs of the Work for Construction Phase ..... 31  
Article 10 Payments For Work During Construction Phase..... 38  
Article 11 Indemnification/Insurance/Bonds ..... 45  
Article 12 Termination and/or Suspension..... 55  
Article 13 Miscellaneous Provisions ..... 55

Article 1

**SCOPE OF WORK**

1.1 CMR shall perform all Preconstruction and Construction Services as defined in Articles 4 and 6 below by providing all labor, materials, equipment, tools, transportation and supplies necessary to complete the Work described in and reasonably inferable from the Contract Documents for the Project (the “Work”). The CMR accepts the relationship of trust and confidence established between it and Southwest by this Agreement and agrees to furnish its best skill, attention and judgment to, and cooperate with, Southwest and the City in furthering the interests of the Project. The CMR shall furnish design reviews, estimating, scheduling, all other Preconstruction Services, bidding, self-performed work, construction management and administration services and all other Construction Services as may be required and use its best efforts to perform the Work in the most expeditious, economical and thorough manner consistent with Southwest’s interests and the interests of the Project. Construction Services as provided in Article 6 may commence before the Preconstruction Phase is completed, in which case, both phases will proceed concurrently.

1.2 The CMR is required, under this Agreement, to provide Preconstruction and Construction Services for the Work on the Project which is located at a busy metropolitan airport that shall be, and must continue to be, secure and fully operational during the construction. CMR shall be bound by and shall comply with all design and construction requirements pertaining to CMR and the Work as set forth under Applicable Laws, including those promulgated by the Airport Authority, TSA, and FAA, all of which are incorporated into this Agreement by this reference. Detailed requirements for conducting construction activities at an operational airport under secure conditions can be found at [www.flydenver.com](http://www.flydenver.com) as detailed in the Airport Rules and Regulations.

1.3 The Project is the new cargo facility at the Denver International Airport, consisting of Preconstruction and Construction Services for the Work as described in the second paragraph on page 1 of this Agreement. It includes various Project components to be constructed pursuant to certain Specifications and Drawings.

1.4 CMR acknowledges that Southwest and the City may be performing other projects involving procurement and/or construction of systems and appurtenances or installation of items that require coordination with the ongoing construction of the Project. CMR will be responsible to provide coordinated access to all Work areas and will cooperate and coordinate its efforts with Southwest’s Separate Contractors and City contractors involved in the design and construction of these other projects. Other projects not constructed by CMR for Southwest or the Airport Authority are critical for the function of the Project and the CMR agrees to develop the Project Schedule with consideration given to these other activities. CMR’s overall rights, responsibilities and obligations with respect to the activities of the Separate Contractors are set forth in Article 6 of the General Conditions and unless provided for in Article 6, the CMR is not eligible to receive any additional compensation or fee markup on the other elements of work performed by Southwest’s Separate Contractors and/or the City.

1.5 **Definitions.** Except as otherwise expressly provided herein, those terms set forth in “Definitions” in the General Conditions shall, when used in this Agreement and in the General Conditions, have the meanings as therein provided.

## Article 2

### CONTRACT DOCUMENTS

2.1 The Contract Documents are comprised of the following and are further defined in the General Conditions of the Contract:

2.1.1 This Agreement, including all Exhibits, Attachments, Addenda, and/or Change Orders issued in accordance with this Agreement;

2.1.2 The General Conditions for the Construction Manager at Risk Agreement for Construction of the new DEN Cargo Facility (the “General Conditions”);

2.1.3 The Drawings and Specifications, to be added by Change Order once developed by Southwest, the CMR, and any other required parties;

2.1.4 Any lease entered into between Southwest and the City;

2.1.5 The Airport Authority’s Airport Rules and Regulations;

2.1.6 The Airport’s Design Standards Manual;

2.1.7 The Airport’s Environmental Management System Guidelines.

The various documents included as Contract Documents are further defined in the General Conditions of the Contract. Any references to Contract Documents (as noted above) that are not in existence as of the Effective Date of this Agreement or the General Conditions shall not be effective until such time as such Contract Documents have been added to the Agreement by mutually agreed to Change Order.

2.2 This Agreement and the General Conditions include and incorporate the following Exhibits:

- Exhibit A: CMR’s General Conditions Costs Schedule
- Exhibit B: CMR’s Preconstruction Schedule of Values
- Exhibit C: Waiver and Release Documents
- Exhibit C-1 Conditional Waiver and Release on Progress Payment
- Exhibit C-2: Unconditional Waiver and Release on Progress Payment
- Exhibit C-3: Conditional Waiver and Release on Final Payment
- Exhibit C-4 Unconditional Waiver and Release on Final Payment
- Exhibit D: Southwest Audit Provisions
- Exhibit E: Payment and Performance Bond Template

## Exhibit F: Final Guaranteed Maximum Price Change Order

Exhibit F-1:	List of Drawings/Specifications
Exhibit F-2:	Alternates, Allowances, Unit Prices
Exhibit F-3:	Clarifications and Assumptions
Exhibit F-4:	FGMP Statement and Supporting Documentation
Exhibit F-5:	Construction Schedule of Values
Exhibit F-6:	CMR's Project Construction Schedule
Exhibit F-7:	CMR's Key Personnel

- Exhibit G: Application for Payment Template  
Exhibit H: Change Order Template  
Exhibit I: Southwest Invoicing Requirements  
Exhibit J: Southwest Background Check Screening Requirements  
Exhibit K: Southwest Security Provisions

Any references to Exhibits in development that are included in the Agreement or the General Conditions shall not be effective until such time as these Exhibits have been added to the Agreement by mutually agreed to Change Order.

### Article 3

#### INTERPRETATION AND INTENT

3.1 CMR shall perform and complete all Work required under this Agreement, including but not limited to the Preconstruction and Construction Services in a good and workmanlike manner and in strict accordance with all Applicable Laws, the Contract Documents, and all obligations required therein within the Contract Time(s) and Contract Sum, keeping in mind the operational requirements of the Airport. Each Contract Document is an integral part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents shall be interpreted as being explanatory and complementary in requiring complete work ready for use and occupancy or operation in satisfactory working condition with respect to the functional purposes of the installation. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 3.2 below.

3.1.1 **Coordination and Cooperation.** CMR shall coordinate all Preconstruction and Construction Services with all Governmental Authorities, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the construction requirements. CMR shall assist Southwest's staff and reasonably cooperate with Southwest's legal, financial, design and construction consultants and all other designated representatives during the Preconstruction and Construction phases of the Project.

3.2 To the extent any inconsistency, ambiguity, or discrepancy is found within the Contract Documents, precedence shall be given in the following order of priority, unless otherwise

expressly set forth in this Agreement: (1) Change Orders issued after execution of this Agreement, including the FGMP Change Order (except for Exhibit F-3 which shall have the rank of (6) below); (2) this Agreement, including the Exhibits attached hereto and incorporated fully herein; (3) Addenda issued prior to the execution of this Agreement, with the Addenda bearing the latest date taking precedence; (4) the General Conditions; (5) the Lease; (6) Exhibit F-3 of the FGMP Change Order; (7) the Specifications; and (8) the Drawings. Without limiting the foregoing, the terms of the General Conditions of the Contract shall control over any terms in the Drawings or Specifications inconsistent therewith.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions, or as further defined in the Contract Documents.

3.4 The Contract Documents form the entire agreement between Southwest and CMR and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations or agreements, either written or oral. CMR and all Subcontractors and Suppliers shall fully comply with the Contract Documents and Applicable Laws.

3.5 By executing this Agreement, CMR represents and acknowledges that, as of the date of the execution of this Agreement, it has carefully examined the Contract Documents and the Project site, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work required by the Contract Documents and under each phase of the Work, that it has familiarized itself as to all environmental conditions, surveys, and reports, and that it can and will perform all Work in compliance with Applicable Laws. CMR acknowledges that the Work includes providing, in addition to Construction Services, Preconstruction Services in connection with the design, constructability, quality and scope of the Work included in the Project. The failure of the CMR to acquaint itself fully with any of the above-described conditions or matters, and particularly the requirements of the Airport Authority applicable to the Project, shall not in any way relieve the CMR from the responsibility for performing the Work in accordance with Applicable Laws, the Contract Documents, within the Contract Sum, and within the Contract Time contemplated by the Project Schedule. CMR acknowledges that, through providing the Preconstruction Services, it has participated in the design process sufficiently to understand the design intent, budgetary constraints, scope, quality considerations, nature and constructability of Work as required by the Contract Documents and the Applicable Laws.

3.6 **Prevailing Wage Rates.** CMR acknowledges and represents that it shall, at all times during the performance all Work provided under this Agreement, comply with, and require its Subcontractors to fully comply with Section 20-76 of the Denver Revised Municipal Code that prescribes payment of workers in accordance with prevailing wage rates or the Federal Davis Bacon Act, whichever rates are greater. To that end, CMR agrees that the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices employed by the CMR or any Subcontractor on the Project shall not be less than the scale of wages and fringe benefit payments for similar skills or classifications of work as provided for under Denver Revised Municipal Code Sections 20-76(b) and (c) or the federal Davis Bacon Act, whichever rates are greater. CMR shall provide to all Subcontractors with the applicable prevailing wage rates when soliciting bids and quotes.

3.6.1 CMR and its Subcontractors shall pay all construction workers, mechanics and other laborers at least once a week the full amounts of wages and fringe

benefits accrued at the time of payment, computed at wage rates not less than those stated in Denver Revised Municipal Code Sections 20-76(b) and (c) or those stated in the Federal Davis Bacon Act, whichever rates are greater, except that the CMR and its Subcontractors shall make such payments to janitorial or custodial workers, and oil and gas employees and contractors, at least biweekly. Current rates are posted on the City of Denver's Auditor's website at [www.denvergov.org/auditor](http://www.denvergov.org/auditor) under the Prevailing Wage section. CMR and all Subcontractors shall submit weekly payroll reports in LCPtracker which can be accessed at [www.lcptracker.com](http://www.lcptracker.com).

3.6.2 CMR shall post in a prominent and easily accessible place at the Project site the scale of wages to be paid by CMR and its Subcontractor and that complaints by third parties, including employees of CMR and its subcontractors, of violations may be submitted to the Auditor of the City of Denver, pursuant to Denver Revised Municipal Code Section 20-76(f).

3.6.3 Should CMR or any subcontractor fail to pay such wages as are required herein, payment to the CMR may be withheld until the CMR furnishes Southwest and the City Auditor satisfactory evidence that such wages have been paid as herein required. Partial payments may be made for those amounts for which proper accounting has been made and support has been provided. Procedures to satisfy these requirements can be found at Denver Revised Municipal Code § 20-76(d)(4).

3.6.4 CMR shall submit, with each application for payment to Southwest, a true and correct electronically certified copy of the weekly payroll records of all worker, laborers, and mechanics employed by CMR and its Subcontractors on the Project. Such records shall include information showing the number of hours worked by each worker, laborer or mechanic employed, the hourly pay of such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll. CMR shall attest to compliance with the Prevailing Wage requirements provided in Section 20-76 of the Denver Revised Municipal Code.

3.6.5 CMR shall provide to Southwest, and shall require all Subcontractors to provide to CMR for providing to Southwest, a list of all Subcontractors who will be providing any services under this Agreement. This information shall be submitted to the City of Denver in accordance with prevailing wage requirements.

3.6.6 If any laborer, worker or mechanic employed by the CMR or any Subcontractor has been or is being paid a rate of wages less than the rate of wages required to be paid as indicated herein, Southwest may, by written notice to CMR, suspend or terminate the CMR's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, as provided in Article 12 and General Conditions Article 13.

3.6.7 CMR shall incorporate the provisions set forth in this Section 3.6 into all Subcontracts as required under Section 20-76 of the Denver Revised Municipal Code.

**3.7 Compliance with Denver Executive Orders No. 99 and 94.** CMR shall comply with City Executive Order No. 99, prohibiting smoking in all indoor buildings and facilities at the Airport and with City Executive Order No. 94 and Attachment A thereto (or any successor Executive Order), concerning the use, possession, or sale of alcohol or drugs.

## Article 4

### PRECONSTRUCTION PHASE SERVICES

The CMR shall perform the services described in this Article which constitute Preconstruction Services. All Preconstruction Services shall be performed in a professional manner and in strict accordance with the Contract Documents and all Applicable Laws. The Preconstruction Phase will begin with Notice to Proceed with Preconstruction Services and will continue until establishment of the Final Guaranteed Maximum Price (“FGMP”) unless otherwise terminated or restricted by Southwest. Preconstruction Services shall include items set forth in this Article 4 as well as additional items as requested by Southwest. The Construction Services are set forth in detail in Article 6.

**4.1 Preliminary Evaluation and Information.** CMR shall assist Southwest in evaluating the existing conditions so that Southwest may include such information in its preliminary evaluations, Project scheduling, phasing plans, and budget/price estimating and partial Schematic Design submittals for the Project and the Project components (“Preliminary Evaluation Information”). As part of its Preliminary Evaluation services, CMR shall:

4.1.1 Verify dimensions/details, testing for hazardous material, utility service monitoring/metering/testing and where possible investigating “unknown conditions”.

4.1.2 Provide equipment and labor where reasonably required to perform investigative demolition.

4.1.3 Preliminary Badging/Security Access. CMR shall obtain badging privileges at the Airport as soon as practical, but no more than sixty (60) days after contract award. CMR may be required to provide badged resources and personnel to escort unbadged Design Professionals, designers and/or Southwest personnel from time to time throughout the ongoing Project.

Southwest shall furnish to CMR, by electronic copy, all such Preliminary Evaluation Information prepared prior to the effective date of this Agreement at no cost to CMR.

**4.2 Evaluation of the Project.** CMR shall consult with Southwest to ascertain and arrive at a mutual understanding of the Project requirements. The CMR shall evaluate the Project requirements to gain a clear understanding of the Project, all Project components, Work Packages, phasing plans, schedule, and construction budget requirements each in terms of the other. CMR shall provide input into construction feasibility, actions designed to minimize adverse effects of labor or material shortages, time requirements for procurement, installation, and construction completion, identification and selection of Hardware and confirmation of compliance with particular shipping, delivery, and licensing requirements set forth in Section 6.8 herein, and factors related to construction cost. These shall include estimates of the costs of alternative designs or materials, preliminary budgets and possible economies with respect to space requirements, temporary construction requirements, security requirements, identification and selection of Hardware and confirmation of compliance with particular shipping, delivery and licensing requirements provided in 6.8 below, flexibility and expandability requirements, special equipment and systems, site requirements, enabling projects and any other requirements for phasing of the Project and possible issuance of Work Packages. CMR acknowledges that it may be required to coordinate its Work on the Project with work performed by others outside the scope

of work on this Project. The CMR will provide to Southwest a Project Evaluation report addressing all aspects of this Section within thirty (30) Calendar Days from execution of the CMR Agreement and in compliance with the Architect/Engineer program validation schedule.

4.2.1 At various intervals throughout the design phase of the Project, design documents, updated Project budgets, schedules, and phasing plans will be reviewed by the PMT and the Architect and, upon approval by Southwest, issued to the CMR for use in performing the Preconstruction Services. CMR shall promptly prepare detailed estimates of the cost elements of the Project as reasonably required to determine whether or not the budget for the Project including all Work Packages remains realistic. This is a fast track Project with completion deadlines that cannot reasonably be extended. When the Construction Documents are complete and the Work is bid, it will be too late in the process to substantially redesign the Project to meet the budget. For that reason, it is the desire of Southwest to recognize any likely budget overruns as soon as possible, and by this Contract it is employing the CMR to perform design monitoring, estimating, value analysis and other functions to help Southwest meet the Project budget. At any time that CMR develops concerns about the integrity of the budget for the Project or any of the Project components, CMR shall promptly advise the PMT of the concerns through a Variance Report. The Variance Report shall at a minimum state: a) CMR's concern; b) the apparent cause of the concern, delay or budgetary issue; c) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Schedule; d) define any cost impacts to the Project; e) define any time impacts to the Project; and f) provide CMR's options and proposed resolution to the concern.

4.2.2 **Coordination and Progress Meetings.** CMR shall attend weekly meetings with the appropriate member(s) of the PMT, the Architect, and any Southwest consultants, as necessary. CMR shall participate in review sessions for all phases of the Project, including the development of all Project components, and all Work Packages to ensure the Project, the Project components, and Work Packages are integrated with other activities outside the scope of Work under this Agreement. CMR shall document all Project meetings and provide meeting minutes within three (3) days to the PMT for distribution to all stakeholders.

4.2.3 **Preliminary Schedule and Constructability Review Report.** The CMR shall prepare a preliminary Project schedule (the "Preliminary Schedule") for review by the PMT and approval by Southwest. The Preliminary Schedule shall be based upon Critical Path methodology and shall be included in the Project Schedule. The Preliminary Schedule must include a detailed listing for all activities of the Project and integrate the CMR's services with design deliverables, the work of other consultants, Design Professionals, Subcontractors and Suppliers, and the anticipated construction schedules for any other Southwest Contractors whose work affects the Work, including any work it may be required to perform under a separate contract. Once approved, the Preliminary Schedule shall become the Project Schedule which shall govern the progression of the work on the Project expeditiously and with minimal impact to airline/airport operations and traveling public. The Project Schedule must be updated as required but no less than monthly, unless a longer period for reporting is approved by Southwest. The Project Schedule Milestones shall not be changed or amended except by written approval of Southwest. The CMR shall coordinate and integrate the Project Schedule with the other work performed by Southwest or the Airport Authority.

**4.2.4 Constructability Review Report.** Along with the Preliminary Schedule, CMR shall develop a “Constructability Review” report which will outline items that may challenge the way the Project is to be constructed. Updates to the report, including decision logs, shall be provided on no less than a monthly basis throughout the course of the Project. As Project design proceeds, the Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the IGMP and FGMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, coordination of the Project Work, including the various Project components, occupancy requirements showing Project components having occupancy priority, and the proposed Date of Substantial Completion of the Project and other important milestones. If Project Schedule updates indicate that previously approved schedules may not be met, the CMR shall make appropriate recommendations to Southwest for corrective action. The Constructability Review report shall be updated to provide pertinent analysis of the Project Schedule as necessary.

**4.2.5 Submittal Schedule.** CMR’s Preliminary Schedule and later, the Project Schedule, will include a Submittal Schedule for major shop drawings, product data, samples, mock-ups, and other submittals. CMR will promptly review the submittals for compliance with the Contract Documents and perform all activities with respect to Submittals, Shop Drawings and Product Data. CMR shall not allow any Work to be performed until the respective submittal has been approved by the Architect. Southwest may elect to reject Work performed in accordance with submittals that have not been reviewed and approved by the Architect. The Work shall be in accordance with approved submittals.

**4.2.6 Phased Construction.** The CMR shall provide feedback to the PMT and the Architect regarding the issuance of Drawings and Specifications to facilitate phased construction of the Work and potential for multiple beneficial occupancies of various areas of the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, security requirements and provisions for temporary facilities such as those required for construction maintenance of airport operations, and passenger conveniences. The CMR shall confirm the Work Package breakdown structure as to the various Project components and provide any adjustments necessary to the Preliminary or Project Schedule and phasing plans to allow Work Package content and scope to be defined in detail and published along with adjusted schedule and phasing plans for the Project.

**4.2.7 Work Packages.** It is anticipated that the Work may be divided into one or more phases or packages (such as the “site work package” and/or the “excavation and preliminary foundation package”) which will be ready for commencement of construction before it is appropriate to arrive at the FGMP. If Southwest elects to proceed before the parties agree to the FGMP, CMR shall bid and procure proposals from trade contractors for any pre-FGMP Work and/or packages of the Work identified by the CMR as required to maintain the Project Schedule. Unless an alternate approach is approved in writing by Southwest for any specific scope of work, CMR shall competitively bid such work with specific trades with the intention to contract directly with those trades and not through a third party general contractor.

**4.2.7.1** When the price proposal for any portion of the Work is agreed upon by the CMR the PMT, it shall be set forth in a Work Package Authorization which

(.1) describes the specific scope of the Work to be performed thereunder; (.2) establishes a price based on Costs of the Work as defined in Section 9.1 herein plus CMR's Fee; and (.3) establishes a completion date for such work and liquidated damage provision, if any, as the parties may agree. No Work will be authorized to commence hereunder until the CMR has complied with the requirements of this Section and Southwest and CMR have entered into a written "Work Package Authorization." If Southwest and the CMR are unable to negotiate a mutually agreeable firm fixed price for the Work Package, Southwest is free to procure performance of the construction services for each Work Package independently of this Agreement.

4.2.7.2 The authorized amount of each Work Package Authorization will be included in the IGMP and, later, the FGMP at the time the Construction Documents are sufficiently complete to establish the FGMP. Prior to Southwest's acceptance of the FGMP, CMR shall not incur any cost to be reimbursed as part of the Cost of the Work for Construction Phase services, except as Southwest may specifically authorize in an executed Work Package Authorization. The Fee, if any, to be charged by CMR on any Work performed under any Work Package Authorization will not exceed the Fee for Construction Services (3.25%) set forth in Section 8.1.1.

4.2.7.3 By entering into this Agreement, Southwest is not obligating itself to award any Work Packages to the CMR or to continue to award subsequent Work Packages to the CMR once it has awarded one or more Work Packages to the CMR. If Southwest declines to award any Work Packages to the CMR, this Agreement shall be terminated in accordance with Article 13 of the General Conditions. If Southwest determines not to continue to award subsequent Work Packages to the CMR once it has awarded one or more Work Packages, Southwest may provide notice to the CMR that no additional Work Packages will be awarded to it. Upon receipt of such notice, the CMR shall cease all Work under this Agreement except for the Work necessary to complete Work Packages previously awarded to it unless Southwest otherwise directs. CMR shall remain obligated to complete such Work Packages consistent with the terms and conditions of this Agreement and shall be entitled to receive a pro-rata share of its Fee for approved Work Packages based on the percentage value of the approved Work Packages unless Southwest has otherwise terminated CMR's right to proceed.

4.2.8 **Construction Documents Review:** Throughout the Preconstruction process, Construction Documents will continue to be developed by the Architect, reviewed by the PMT, and issued to the CMR at 30%, 60%, 90% and 100% completion. CMR will thoroughly review the Construction Documents at each stage and will develop and provide to Southwest a "Construction Documents Review" report based upon its review and understanding of the Drawings, details, Specifications and other construction Contract Documents as they are being developed. Updates to the report, including decision logs, shall be provided by CMR as necessary. Comments received from Southwest and the City will be discussed and reconciled by the PMT and the Architect and included in the updates. CMR will provide evaluation of alternatives and recommendations on:

4.2.8.1 Preparation of work scope descriptions that represent the various Project components and Work Packages and scope of the Project for use with bid documents for the various Work Packages.

4.2.8.2 Discrepancies or deviations from the established Project performance criteria or omissions in the Contract Documents.

4.2.8.3 Areas of conflict and overlap in the work to be performed by other contractors.

4.2.8.4 Any discrepancies that may result in Change Orders during construction.

4.2.8.5 Alternative solutions whenever the design, including selection of materials, building systems and equipment, affects construction feasibility, cost, schedule or risk.

4.2.8.6 Possible cost savings and recommendations on cost factors, including suggested alternative materials or designs.

4.2.8.7 Applicable risk management, code, and regulatory agency reviews and approvals for the Project.

4.2.8.8 Risk assessment and suggestions to reduce or minimize identified risks that could affect Project cost and Project Schedule.

4.2.8.9 Design package schedule review and reconciliation with Project Schedule.

4.2.8.10 Assessment of “scope creep” and recommendations for resolution.

4.2.8.11 Written confirmation that each Component and/or Work Package is within budget at each review stage.

**4.2.9 Budget Cost Consultation and Control:** CMR shall prepare progressively detailed estimates of Project costs at such intervals as reasonably requested by Southwest but at least at two (2) milestones: (1) at the IGMP proposal stage, based on 60% Construction Documents, pursuant to Section 5.1 herein; and (2) upon completion of the Construction Documents in connection with the preparation of the FGMP Proposal pursuant to 5.3 herein. CMR shall develop the estimates using quantity surveys, unit prices or lump sum amounts and include all necessary labor, materials, tools, equipment, overhead and profit. The CMR shall provide design alternatives and other recommendations which will contain costs and keep them within the Project budget and FGMP. At the completion of each cost review and estimate, the CMR is to report to Southwest an opinion of cost and conformance to the approved IGMP. In the event that projected costs exceed the established construction budget for any Work Package, or the Project as a whole, CMR will develop for approval and implement reasonable strategies to reduce the costs.

**4.2.10 Subcontractors and Suppliers.** The CMR shall seek to develop Subcontractor interest in the Project and shall furnish to Southwest a list of possible Subcontractors, including Suppliers who are to furnish materials or equipment fabricated to a special design and from whom proposals will be requested for each principal portion of the Work. During this Preconstruction Phase, CMR shall employ good-faith efforts to identify SBE/M/W/DBE to perform portions of the Work in accordance with the SBE/M/W/DBE policy as provided in Section 5.2(B) of the General Conditions and in accordance with the M/WBE participation goal established for the Project by Southwest and the City as set forth in Section 13.6 herein. Southwest will promptly reply in writing to the CMR if it knows of any objection to such Subcontractor or Supplier. The receipt of such list shall not require Southwest to investigate the qualifications of proposed Subcontractors or Suppliers, nor shall it waive the right of Southwest to later object to

or reject any proposed Subcontractor or Supplier. Selection of Subcontractors shall be coordinated with and approved by Southwest.

**4.2.11 Long Lead-Time Items.** The CMR shall recommend to Southwest a schedule for procurement of long lead-time items which will constitute part of the Work to meet the Project Schedule (“Long Lead Items”). Upon written approval by Southwest, CMR will order and procure Long Lead Items and require delivery to the Project on an expedited basis as indicated by Southwest in such time so as to meet the Project Schedule. At Southwest’s option, any such Long Lead Items may be procured directly by Southwest, to be installed by a “Separate Contractor” or may be procured by Southwest with the intent that CMR shall become responsible for such Long Lead Item as part of its scope of the Work hereunder. If such Long Lead-Items are procured by Southwest with the intent that CMR shall become responsible for such items, they shall be procured on terms and conditions reasonably acceptable to the CMR. Upon Southwest’s acceptance of any FGMP, all contracts for such Long Lead Items for which CMR shall become responsible shall be assigned by Southwest to the CMR, and upon CMR acceptance, CMR shall accept responsibility for such items as if procured by the CMR.

**4.2.11.1 Look Ahead Scheduling.** CMR shall consult with Southwest to identify any Long Lead Items needed for the Project and proposed methods to expedite the procurement of such items to ensure their delivery by the required dates. CMR shall review schedules for the performance and completion of the Work and recommend adjustments in the schedules to conform with the required completion dates and/or methods for timely completion of the Project. CMR shall incorporate the activities of all Subcontractors and other parties affecting the progress of the work, including activity sequences and durations, allocation of labor and materials, processing of submittals and shop drawings, data, samples, and delivery of Long Lead Items. CMR will include all necessary approvals and permits from the appropriate Governmental Authorities including, but not limited to the FAA, TSA, and City

**4.2.12 Extent of Responsibility.** The recommendations and suggestions of the CMR concerning design alternatives shall be subject to the review and approval of the Architect and Southwest. It is not the CMR’s responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws as defined herein. However, if the CMR recognizes that portions of the Construction Documents are at variance with the Contract Documents, industry standards or Applicable Laws, the CMR shall promptly notify the Architect and Southwest of such variances in writing.

**4.2.13 Value Analysis.** CMR will provide value engineering analysis studies on construction systems and major construction components, including but not limited to the mechanical systems, exterior envelopes, structural systems, roofing systems, lighting and power services. The value analysis will be summarized in a detailed report and distributed to Southwest and the Architect. CMR will conduct a series of value analysis workshops both during the design phase of the Project and after the Construction Documents are issued to develop cost saving ideas for the Project. The formal reports will be prepared following these workshops and distributed to Southwest and the Architect.

**4.2.14 Construction Planning:** CMR will develop and update a “Construction Implementation Plan” that details the CMR’s approach to accomplishing the Work. The implementation plan should include, at a minimum, the following:

4.2.14.1 Recommendations regarding the division of the Work into bid packages for the various portions of the Work and methods to be used for selection of contractors and Subcontractors and award of agreements for construction of the Work;

4.2.14.2 A statement of estimated costs for the Work including each Work Package, organized into trade categories, with a list of clarifications and exceptions (if applicable), allowances, and proposed Date of Substantial Completion for each Work Package and its impact on the Project as a whole;

4.2.14.3 Preparation of a schedule of values for the Work and each Work Package;

4.2.14.4 A list of proposed Subcontractors, Suppliers and major manufacturers from which CMR proposes to solicit pricing information and coordination of such activities;

4.2.14.5 Verification of the M/WBE status of the proposed Subcontractors, Suppliers and major manufacturers from which CMR proposes to solicit pricing information for the Work.

4.2.14.6 Verification of the proposed packages for Subcontractor bidding that include Drawings, Specifications and work scope descriptions that represent the scope of Work and each particular Work Package;

4.2.14.7 Identification of Long Lead Items proposed methods to expedite the procurement of such items to ensure their delivery by the required dates;

4.2.14.8 Identification of any testing to be performed by third party testing laboratories and consultants and assist in their selection;

4.2.14.9 The proposed Project-specific Safety Plan for the Project which shall address assignment of responsibilities for safety precautions and programs;

4.2.14.10 Requirements for all temporary facilities and Southwest-furnished equipment necessary to enable the CMR and CMR’s Subcontractors to perform the work, including provisions for job site facilities necessary to manage, inspect, and supervise construction of the work and opportunities for facilities and other resources to be shared by the CMR and Southwest’s Separate Contractors;

4.2.14.11 Identification of the types and quantities of labor (craft as well as field overhead) required for the Work and each Work Package and review the appropriate categories of labor required for critical phases or stages together with recommendations for actions to minimize adverse effects of labor shortages; and

4.2.14.12 A detailed plan for permitting and inspection activities integral to the published Project Schedule.

4.2.14.13 FAA 7460-1 Temporary Construction: List of proposed construction equipment, and temporary facilities (batch plants, trailers) and their locations, heights, and anticipated schedule durations for use on the Project.

4.2.14.14 **Construction Safety and Phasing Plan / Safety Plan Compliance Documents:** Identify proposed phasing and safety plan for construction at DEN. Include haul routes, temporary facilities, AOA fence alignments, detailed work inside the AOA, Security and Safety during construction.

4.2.14.15 Identify potential borrow sources for imported fill material meeting the requirements for this Project.

4.2.15 **Quality Control/Quality Assurance.** CMR shall implement and effectively manage a documented program for quality control of its Work and the work of Subcontractors that is acceptable to Southwest. CMR shall provide throughout the Work, in all phases, regular reports tracking the activity and performance of this program to ensure the quality of the Work being performed will comply with the Contract Documents.

4.3 **Payment for Preconstruction Services.** For Preconstruction Services, CMR shall be paid based upon the Cost of the Work (as defined in Section 9.1 herein) incurred by CMR each month of Preconstruction Services plus a fee of zero percent (0%) not to exceed the sum of **ONE HUNDRED TWENTY THOUSAND DOLLARS AND NO CENTS (\$120,000.00)**. Any Work Packages approved and Work begun during the Preconstruction Services phase will be invoiced and tracked as set forth in Section 4.2.7. The CMR shall invoice Southwest monthly for payment on the **25<sup>th</sup>** day of each month showing the allowable Costs incurred that month for services rendered together with CMR's Fee. Each invoice shall be based on the approved Schedule of Values for the Preconstruction Services, showing the appropriate cost categories and the application of the fee and shall be accompanied by such supporting documentation by Southwest to substantiate the monthly billing. Payments shall be made within thirty (30) Calendar Days after approval of the invoice by Southwest.

4.4 **Changes to Preconstruction Services.** Any changes to the scope of the Preconstruction Services shall be governed by Article 7 of the General Conditions. Delays to the performance of the Preconstruction Services shall similarly be governed by Article 8 of the General Conditions.

4.5 **Insurance for Preconstruction Services and Work Performed During Preconstruction Services Phase.** As of the Effective Date set forth above, and for the duration of the Agreement, including the providing of Preconstruction Services hereunder, the CMR shall maintain in effect insurance policies providing the coverages specified in Section 11.2, subject to the terms, conditions and exclusions stated in such policies (except those exclusions which CMR is specifically required to delete), with limits not less than those set forth therein, with insurers acceptable to Southwest and authorized to do business in the State of Colorado, and under forms of policies reasonably satisfactory to Southwest. In addition, CMR shall meet all insurance requirements set forth in the Lease.

4.6 **Suspension/Termination of Preconstruction Services.** Southwest shall have the sole and exclusive right at any time to suspend or terminate the performance of Preconstruction Services for Southwest's convenience and without cause by giving ten (10) Calendar Days written notice to CMR ("Preconstruction Termination for Convenience"). In such event and provided CMR is not in default of its obligations hereunder, CMR shall immediately surrender any and all work product prepared by CMR for use on the Project and be entitled to payment for Preconstruction Services rendered and accepted by Southwest as having been performed in accordance with this Agreement to the date of suspension or termination. In the event of suspension, but not Termination, of the

Work, Southwest shall give ten (10) Calendar Days advance written notice to CMR of the date Southwest expects to redeploy CMR to complete Preconstruction Services. In the event Southwest does not elect to re-deploy CMR to complete Preconstruction Services within three (3) months of suspension of services, the suspension shall automatically convert to a termination for Southwest's convenience and Southwest shall no longer be obligated hereunder.

## Article 5

### DEVELOPMENT OF GUARANTEED MAXIMUM PRICE

5.1 **Development of Initial Guaranteed Maximum Price Proposal.** At the time of its bid for the Project and based on 60% Construction Documents provided to CMR, the CMR shall prepare, for review and approval by Southwest, an Initial Guaranteed Maximum Price proposal ("IGMP") organized by Project component with subcontractor bids, in a spreadsheet format with sufficient detail and accompanied by supporting data.

5.1.1 The IGMP shall be computed as the sum of the following:

5.1.1.1 CMR's Estimated Cost of the Work for the Project, which shall consist of the sum of the quantities, fixed prices, unit prices, Subcontractor's quotations, labor rates, taxes, and other amounts representing the cost of the Work, and the reasonable, good faith estimate of the cost of the balance of the Work;

5.1.1.2 the "not to exceed" amount of the CMR's General Conditions Costs (the "CMR's GCs");

5.1.1.3 a deductive amount for any savings incurred for bought-out, completed or partially completed Work included in duly executed Work Package Authorizations approved prior to establishing the IGMP;

5.1.1.4 the CMR's Contingency pursuant to (and as limited by) Section 5.9 and Section 8.3 below;

5.1.1.5 the CMR's Fee in accordance with Section 8.1.1 below;

5.1.1.6 Alternates as approved by Southwest; and

5.1.1.7 Allowances stipulated by Southwest.

5.1.2 The CMR shall meet with Southwest to review the IGMP and the written statement of its basis. In the event that any inconsistencies or inaccuracies in the information are discovered, Southwest shall promptly notify the CMR, who shall make appropriate adjustments to the proposed IGMP, its basis, or both. Southwest may authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to address any agreed-upon assumptions and clarifications relating to such Drawings and Specifications. Such revised Drawings and Specifications shall be furnished to the CMR in accordance with schedules agreed to by Southwest and the CMR. The CMR shall promptly notify Southwest if such revised Drawings and Specifications are inconsistent with any agreed-upon assumptions and clarifications.

5.1.3 CMR shall finalize the IGMP against the Project Budget and prepare the IGMP and transmit it to Southwest for review and approval. Prior to approval of the IGMP, the CMR shall not incur any cost to be reimbursed as part of the Cost of the Work,

except as Southwest may specifically authorize in writing through a Work Package Authorization as described in Subsection 4.2.7 above.

5.1.4 Upon approval, the IGMP Proposal shall thereafter become the basis upon which the FGMP shall be established. Prior to approval of the IGMP, the CMR shall not incur any cost to be reimbursed as part of the Cost of the Work, except as Southwest may specifically authorize in writing.

**5.2 Basis of Initial Guaranteed Maximum Price.** The CMR shall include with the proposed IGMP a written statement of its basis, organized by Project Component and including all Work Packages, the details of which shall include:

5.2.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the IGMP;

5.2.2 A list of allowances and a statement of their basis (quantities, unit pricing);

5.2.3 A list of the clarifications and assumptions made by the CMR in the preparation of the IGMP to supplement the information contained in the Drawings and Specifications;

5.2.4 A confirmation of the various coverages to be supplied under the insurance program and the limits of those policies as required in Section 11.2, along with an estimate of the costs for insurance and bonding required under this Agreement;

5.2.5 The proposed IGMP, including a statement of the estimated cost organized by Project Component to include all trade categories, allowances, contingency, Fee percentage, insurance and bonding costs, professional staff estimates, CMR's GCs, and other items that comprise the IGMP. A line item schedule of values allocating the proposed IGMP shall be provided to facilitate easy review and later comparison of the Estimated Cost of the Work for the IGMP to the FGMP. CMR shall note those portions of the IGMP that are the subject of previously approved Work Package Authorizations; and

5.2.6 The Project Schedule upon which the proposed IGMP is based. At a minimum, the schedule shall include the Date of Substantial Completion for the Project with the various Milestone dates for Work Packages, completion of the individual Project components and a schedule of the Construction Documents issuance dates upon which the Milestone dates and Date of Substantial Completion are based. Post-construction warranty expiration dates and other post-construction deadlines shall be provided in the proposed Project Schedule.

**5.3 Development of the Final Guaranteed Maximum Price.** The Final Guaranteed Maximum Price for the Project is the "FGMP". The FGMP shall be developed based upon and shall refine and supplement the IGMP in accordance with the following procedure: Within thirty (30) days of the date 90% Construction Documents are approved by Southwest and provided to CMR, the CMR shall submit its FGMP Proposal to propose the final guaranteed maximum price of the Project and its components. CMR shall utilize the same spreadsheet format in which the IGMP was presented with the addition of a "cost difference" column. The FGMP Proposal shall be organized using the same criteria set forth in Sections 5.1 and 5.2 above, upon which the IGMP is based.

5.3.1 The CMR shall meet with Southwest to review the FGMP Proposal and the written statement of its basis. In the event that any inconsistencies or inaccuracies in the information are discovered, Southwest shall promptly notify the CMR, who shall make appropriate adjustments to the FGMP Proposal, its basis, or both. Southwest shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to address any agreed-upon assumptions and clarifications relating to such Drawings and Specifications. Such revised Drawings and Specifications shall be furnished to the CMR in accordance with schedules agreed to by Southwest and the CMR. The CMR shall promptly notify Southwest if such revised Drawings and Specifications are inconsistent with any agreed-upon assumptions and clarifications.

5.3.2 CMR may, with the written approval of Southwest, submit Construction Documents for permitting at an earlier date. Southwest reserves the right to approve various Work Packages before the FGMP is accepted, by and through the process set forth in Section 4.2.7 above.

5.3.3 At the completion of the Construction Documents phase for the work included in the FGMP Proposal, the CMR will update and refine a comparison of projected costs to the FGMP, and in the event that projected costs exceed the FGMP Proposal, CMR shall justify each cost exceeding projections, and develop a plan for approval and implementation containing reasonable strategies to reduce costs to meet the FGMP established in the FGMP Proposal.

**5.4 Basis of Final Guaranteed Maximum Price Proposal.** The CMR shall include in the FGMP Proposal a written statement of its basis, organized by Project Component, which shall be provided based on the same categories as set forth in the IGMP Proposal indicated in Section 5.2 above. A line item schedule of values allocating the proposed FGMP and comparing it to the IGMP shall be provided to facilitate easy review and comparison of the Estimated Cost of the Work for the FGMP to the IGMP. CMR shall note those portions of the FGMP that are the subject of previously approved Work Package Authorizations.

**5.5 Final Guaranteed Maximum Price (“FGMP”) Change Order.** CMR shall prepare the FGMP Proposal so as to meet the deadline for submittal of the FGMP proposal provided in Section 5.3 above. If the parties agree upon the Guaranteed Maximum Price and other items comprising the FGMP Proposal, Southwest shall issue a Change Order (the “FGMP Change Order”) thereby establishing the FGMP for the Work, the GCs, the final Project Schedule, completion dates and other portions of the Agreement to provide a fully functional Project. The FGMP Change Order shall set forth the FGMP; the Schedule of Values, allowances, assumptions on which the FGMP is based, contingency, alternates, unit prices (if any), GCs, Substantial Completion Date, Final Completion Date, Construction Schedule, and other documentation and information required by Southwest and shall be made a part of this Agreement as Exhibit F. If Southwest, in its discretion, determines that the parties are unable or unwilling to agree upon an FGMP, Southwest may, at its election may take one or more of the following actions:

5.5.1 terminate this Agreement by providing the CMR with notice of termination under Section 4.6 of this Agreement. Promptly after such termination, receipt of final conditional releases from the CMR, its Subcontractors and others performing Work, and the receipt of all documents reasonably requested by Southwest, Southwest shall pay the CMR incurred Preconstruction Costs plus the CMR’s Preconstruction Fee thereon as set forth in Section 4.3, as full payment for all Work and services performed by the CMR to that point, which shall be the exclusive and total

amount due the CMR in connection with the Agreement and the termination thereof pursuant to this Section; or

5.5.2 direct the CMR to proceed under a Work Package Authorization as provided in Section 4.2.7; or

5.5.3 direct the CMR to continue to participate in value engineering exercises so that the CMR can submit another FGMP Proposal at a reduced cost, in which case Southwest shall decide whether to accept the revised FGMP Proposal or terminate this Agreement and shall have the rights to proceed or terminate as to that revised FGMP Proposal as set forth in this Section.

5.6 Prior to the issuance of the FGMP Change Order and a written Notice to Proceed with the Construction Phase, the CMR shall not incur any cost to be reimbursed as part of the Cost of the Work for the FGMP, except as Southwest may specifically authorize in writing. Once accepted, the FGMP Change Order shall supersede the IGMP.

5.7 Not later than the approval of the FGMP Change Order by Southwest and issuance of 100% Construction Documents, CMR shall submit Construction Documents for permitting and/or approval of the work provided in and approved by the FGMP Change Order by the City permitting offices.

5.8 **Southwest Access to the GMP Process.** Southwest shall be entitled to full access to the details of the CMR's process to arrive at any Work Package Authorization, the IGMP and the FGMP. It is the intent of this Agreement that allowances, assumptions, clarifications, and any other elements that could lead to change orders after the FGMP is determined be held to a minimum.

5.9 **CMR Contingency.** It is understood and agreed that the FGMP Change Order shall include a CMR's Contingency for the purpose of reasonably protecting the CMR's IGMP and FGMP budget and CMR's Preliminary and/or Project Schedule against unanticipated costs incurred and unplanned impacts which must be addressed in order to complete the Work in accordance with the Contract Documents. CMR's use and expenditure of CMR's Contingency shall be strictly governed by the terms and conditions of Section 8.3.

5.9.1 The CMR will provide a monthly accounting to Southwest of all expenses associated with the utilization of the CMR's Contingency. To the extent the CMR utilizes CMR Contingency during any particular month, it shall be entitled to charge its Fee percentage on contingency expended during that month. Fee shall be charged only on contingency sums approved by Southwest and actually expended by CMR.

5.9.2 Periodically, as the CMR is able to fix the Cost of the Work through binding price commitments from Subcontractors or from executed subcontracts, supply agreements, or purchase orders and as the CMR's risk of unforeseen losses is further reduced by the completion of portions of the Work through Work Package Authorizations, the CMR's Contingency shall be reduced by the written agreement of Southwest and the CMR, such agreement not to be unreasonably withheld. Upon the reduction of the CMR's Contingency, Southwest, in its discretion, may cause the FGMP to be reduced by the amount the CMR's Contingency is reduced or may cause such reduction in the CMR's Contingency to be used to pay for a change in the Work authorized pursuant to Article 7 of the General Conditions.

## Article 6

### CONSTRUCTION PHASE SERVICES

**6.1 Construction Phase Services.** CMR shall construct, supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures in connection with the Work, all of which shall be performed in a good and workmanlike manner, in strict compliance with the Contract Documents and all Applicable Laws, within the Contract Time, and not to exceed the Contract Sum. CMR shall provide everything required for the orderly progress and proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

**6.1.1 Subcontractors.** Those portions of the Work that CMR does not perform with its own personnel shall be performed under contracts with CMR whereby appropriate Subcontractors and Suppliers provide all labor, materials, Hardware, equipment, tools, transportation and supplies for the construction of the Project. CMR shall manage the solicitation, assembly and buyout of all subcontractor bid packages under Southwest's direction. CMR shall contract in its own name with the specified Subcontractor or Supplier. Under no circumstances shall CMR contract with a third party general contractor to allow that general contractor to then contract with the specified Subcontractor or Supplier. CMR shall include specific Agreement clauses in all subcontracts and purchase agreements (exactly as worded except as necessary to properly identify the contracting parties) such as, but not limited to, Insurance, Audit and Records Clause, Partial Payments, Indemnity, Termination for Convenience and other clauses as may be appropriate or required by Southwest. CMR will be required to submit its subcontract and/or purchase order form to Southwest for approval prior to any execution or use of same. CMR shall keep a copy of all executed subcontracts and purchase orders entered in connection with this Agreement at the job site and available for inspection by Southwest upon request.

**6.1.1.1** CMR shall obtain a minimum of three (3) competitive bids from the Subcontractors, Suppliers and second-tier subcontractors with whom it intends to contract for any portion of the Work or any portion of any Work Package with in excess of \$50,000. Pre-qualification of subcontractors should be reviewed Southwest and the PMT. After analyzing such bids, CMR shall deliver such bids to Southwest for coordination with the PMT.

**6.1.1.2 Self-Performed Work.** CMR may self-perform Work but must disclose to Southwest its intention to perform any Work, other than supervision of the Work, by the CMR's own forces. Southwest will require the CMR to submit a proposal along with other subcontractors for work the CMR would like to self-perform. Self-performed work by the CMR should be limited only to those areas where it is in the best interest of the Project to do so. Total self-performed work shall not exceed thirty-five percent (35%) of the FGMP without prior approval by Southwest. In order for Work to be self-performed, the CMR must submit a proposal 48 hours in advance of competing bids. CMR must obtain a minimum of two (2) additional bids from similarly qualified bidders. CMR may execute the Work only after approval by Southwest following review of all bids. CMR acknowledges that the

PMT will participate fully in the bid review process and will review any CMR bid using the same criteria.

6.1.1.3 With respect to Subcontractors, second tier subcontractors, and any lower tier subcontractors, CMR shall provide Southwest advance notice and get Southwest's written concurrence for any proposed subcontract Change Order which exceeds \$25,000 regardless of whether or not any such commitment will affect the FGMP. Overhead/Profit markups for Subcontract and lower-tier subcontract Change Orders shall only be allowed as provided in Section 7.5 of the General Conditions.

6.1.2 Southwest will obtain input from CMR as to which bids will be accepted, and will seek approval of the selections by the PMT, which must approve same. Southwest may, at its discretion, award separate contracts for work related to the Project with notice to the CMR, but CMR shall not be required to contract with anyone to whom CMR, Southwest and/or the PMT has reasonable objection.

**6.2 Project Administration, Budgeting and Scheduling.** CMR shall establish and maintain an on-site organization of competent, full-time personnel to conduct the administration of the Project, including coordination with Southwest's Separate Contractors and those furnishing Southwest-furnished materials, furnishings or other items identified in the Construction Documents, provide budgeting and cost control measures, scheduling, review of shop drawings and submittals, and general direction over the Work and progress of the Subcontractors, all of which shall include at least the following:

**6.2.1 Project Budget Control:** Throughout the duration of the Project on a monthly basis, the CMR shall provide updates of ongoing cost and budget impact and provide on-going cost consultation services including procurement and construction cost estimates for the Work, including all Work Package Authorizations and components of the Cost of the Work. In addition, the CMR shall:

6.2.1.1 Maintain cost accounting records in such format approved by Southwest on expenditures for materials, labor, or for any other expenditures requiring accounting records, affording Southwest access to these records. All records shall be preserved for a period of seven (7) years after final payment is made to the CMR;

6.2.1.2 Comply with Southwest's requirements for submission of progress and final pay applications;

6.2.1.3 Prepare and administer the Schedule of Values together with sworn statements and waivers/releases of lien, contract and disbursement summaries, proposed change order logs and change orders, and budget cost summary reports and submit same to Southwest on a monthly basis;

6.2.1.4 Prepare and administer Subcontractors' schedule of values, sworn statements and lien waivers, contract and disbursement summaries, proposed change order logs and change orders, and budget cost summary reports and submit same to Southwest on a monthly basis.

6.2.1.5 Identify all variances (increases or decreases) between estimated costs and actual costs and report such variances to Southwest within five (5) Business Days, along with recommendations for corrective action; and

6.2.1.6 Notify Southwest of approval of all modifications to any budget established by Southwest or the CMR; and

6.2.1.7 Notify Southwest within five (5) Business Days of identification of any item or portion of the Project that CMR contends is not within the scope of the Project, or if CMR contends that an adjustment to the FGMP or contract duration should be made due to a deviation from the established performance criteria. In the event of a dispute, the parties may proceed through the appropriate processes to resolve the dispute as set forth herein.

**6.2.2 Project Schedule Control:** The CMR shall achieve Substantial Completion of the Project and all Work Package Milestones not later than the dates set out in the Project Schedule. The CMR shall perform scheduling during the Construction Phase including:

6.2.2.1 Monthly monitoring, updating, and reissuing of the Project Schedule as construction progresses, including detailed construction schedules, submittal schedules, inspection schedules, commissioning, and occupancy schedules and coordination of the Project Schedule. All schedule and budget modifications must be approved by the PMT on a monthly basis;

6.2.2.2 Electronic uploads to Southwest in the required electronic format for insertion of CMR's scheduling data into the Project Schedule;

6.2.2.3 Labor and equipment resource loaded schedule reports shall be provided with each Project Schedule update;

6.2.2.4 Variances between the baseline FGMP schedule, the current schedule, and projected completion dates;

6.2.2.5 Review of the schedules for work not started or incomplete and recommend adjustments in the schedules to conform with the required completion dates and/or methods to bring Project back on schedule if needed;

6.2.2.6 Provide summary reports and narratives of each Project Schedule update and document all changes in construction schedules;

6.2.2.7 Incorporate the activities of all Subcontractors and other parties affecting the progress of the work, including activity sequences and durations, allocation of labor and materials, processing of submittals and shop drawings, data, samples, and delivery of Long Lead Items.

6.2.2.8 Utilize Critical Path Method ("CPM") scheduling software from Primavera P6 to be consistent with that utilized by the PMT to facilitate data file exchange with Southwest. The CMR shall resource load the CPM Schedule with estimated labor, materials and equipment estimates to enable cost analysis and planning to be monitored by the PMT. The resource loaded CPM Project Schedule shall be submitted to the PMT on a monthly basis in both electronic Primavera P6 file format and hard copy with the CMR's Application for Payment.

6.2.2.9 Utilize software for the Project management processes as required by Southwest to control submittals, invoicing, resource utilization and document management and to facilitate data exchange and tracking for the Project.

The CMR and the PMT shall collaborate to develop Project specific reports as required by the PMT.

6.2.2.10 If, in the opinion of Southwest, work accomplished falls behind the approved Project Schedule or may impact the progress of the Work, the CMR shall take such action as necessary to improve the progress and to insure completion of the Work by the scheduled dates.

**6.2.3 Project Administration and Staff Reporting:** CMR's site personnel shall include its Authorized Representative with full authority to contractually commit CMR to any and all Work Package Authorizations, contract, financial and schedule related decisions and agreements as well as appropriate Project Superintendent(s), Project Engineer(s), Quality Control personnel, and administrative support personnel. CMR shall manage personnel keeping in mind that the Project site is a 24 hour/day, 7 day/week operation and that multiple shifts and/or weekend work may be necessary. Include quality control, safety control, schedule and project engineering staffing as required for appropriate durations. Any changes to staff shall only be allowed with prior approval by Southwest and/or the PMT. In addition, CMR shall:

6.2.3.1 Provide monthly written reports on the progress of the Work in a form and format approved by Southwest;

6.2.3.2 Provide safety reporting and all copies of all incident reports to Southwest as requested or required;

6.2.3.3 Maintain a daily log of Project activities containing a record of weather, Subcontractors working on the site, number of workers, work accomplished, problems encountered, and other relevant data, providing a copy of said log to the PMT on a daily basis;

6.2.3.4 Schedule, direct and attend weekly and monthly meetings with Southwest, various members of the PMT, and the Architect during the construction of the Project to discuss progress, problems, procedures and scheduling. CMR shall also prepare and distribute a written agenda for the meeting and list of critical activities and record and distribute the minutes of each meeting as directed by Southwest;

6.2.3.5 Obtain any and all construction permits and any special permits for permanent improvements and other governmental approvals required for the Project and to arrange for all inspections and similar procedural items as required by Applicable Law or the Contract Documents as well as assist Southwest in obtaining all approvals required from authorities having jurisdiction over the Project;

6.2.3.6 Cooperate fully with Southwest, the City, and the Airport Authority in the enforcement of prevailing wage requirements in accordance with Denver Revised Municipal Code Section 20-76. CMR shall follow established payroll procedures including submission of payroll records and other documentation for the CMR and Subcontractors as set forth in Section 3.6 herein;

6.2.3.7 Create and maintain a photo gallery of existing conditions and weekly job progress;

6.2.3.8 Maintain all records, logs, test reports, material tickets and certifications to comply with Project documentation requirements;

6.2.3.9 Coordinate construction inspections and track, respond and resolve notices to the satisfaction of all Governmental Authorities. CMR will be responsible for scheduling and coordinating all continuous inspection services required;

6.2.3.10 As construction progresses, provide system commissioning and training for Southwest personnel and their representatives and distribute OEM's prior to training. Training will require multiple shifts on multiple days and will require training manuals and equipment cut sheets for distribution;

6.2.3.11 Secure all occupancy permits, submit record documents, As-Builts, and maintenance manuals;

6.2.3.12 Review and process final change orders and submit a final report of construction costs;

6.2.3.13 Maintain up-to-date as-built documentation and submit final As-Builts.

**6.2.4 Requests for Information ("RFI's"), Document Control, and Submittals.** CMR shall request information from the Architect through formal processes established by Southwest as needed to facilitate the CMR's prosecution and management of the Project. In addition, and as part of its documentation responsibilities, CMR shall:

6.2.4.1 Obtain and finalize all necessary construction permits.

6.2.4.2 Establish and implement procedures for expediting the processing and required approvals of Shop Drawings and other submissions in accordance with Southwest procedures. CMR shall review all Shop Drawings and other submissions from Subcontractors for conformance with the Construction Documents and to coordinate Shop Drawings and other submissions prior to submitting them to the Architect to review for compliance with design intent.

6.2.4.3 Maintain and make available at the Project site updated records of subcontracts, drawings, samples, manuals, procedures, Project correspondence and all other construction related documents, including all changes and revisions. Records shall include a current directory of all personnel involved with the Project including emergency contact information. CMR shall obtain data from Subcontractors and maintain a current set of As-Built Drawings and record drawings in accordance with Southwest requirements.

6.2.4.4 Cooperate with PMT in the development and implementation of a system for the preparation, review and processing of Change Orders, change order requests, subcontractor change requests, and requests for information, in accordance with Contract Documents. and make recommendations to Southwest on the most effective approach to implement approved changes.

6.2.4.5 Coordinate and facilitate the creation of As-Built Drawings, and the procurement of warranties and guarantees.

6.2.4.6 Provide Southwest with complete, unaltered copies of all subcontracts, and all Change Orders thereto.

6.2.5 **BIM Modeling.** CMR shall monitor, manage, maintain and coordinate the Building Information Model (“BIM”) utilized on the Project and shall provide interface requirements to enable AutoCAD drawings files to be imported into the BIM, manage the process of conflict resolution, coordinate drawings into and out from the BIM, manage process of conflict documentation and resolution including frequency of meetings, and provide reports and other BIM deliverables to PMT on an ongoing basis. Deliverables include:

6.2.5.1 Information technology requirements including specific hardware/ software to be utilized in the BIM approach;

6.2.5.2 Software requirements and other interface requirements required from the Architect or Southwest to enable AutoCAD and Revit drawings files to be imported into the BIM;

6.2.5.3 Process and management of conflict resolution, conflict documentation process and conflict resolution process including frequency of meetings; and

6.2.5.4 Reports and other BIM deliverables that CMR will provide to the PMT on a recurring basis.

6.3 **Use of Site.** CMR acknowledges that it is performing the Work at a busy metropolitan airport that shall be, and must continue to be, secure and fully operational during the construction. CMR’s use of the Project Site is limited because of the ongoing nature of the Airport operations and occupancy by Southwest. CMR shall be responsible for the safety and security of the Project Site, aircraft, equipment and existing facilities, and signs on Airport property. At all times, CMR shall comply with all safety rules and regulations and all other Applicable Laws, Airport Authority, and City requirements respecting the Project Site. CMR shall coordinate use of premises under direction of the PMT. CMR shall be responsible for monitoring use of premises by employees and Subcontractors. All access routes for delivery of materials, Hardware, and equipment shall be as indicated on Contract Documents and as approved by appropriate Governmental Authorities. CMR shall assume full responsibility for protection and safekeeping of materials, Hardware, and products as stored on Project site and shall store materials and products only in those areas indicated for staging. The Project site shall not be unnecessarily encumbered with materials, Hardware, or equipment.

6.3.1 **Signage.** Neither CMR nor any Subcontractor shall place any signs or advertising materials, other than identification signs for CMR’s or its Subcontractor’s operations, in any location at the Project without the prior consent of Southwest. Any request for the approval of identification signs for the CMR’s or its Subcontractor’s operations shall be accompanied by illustrative drawings and design dimensions together with information about the type of identification signs proposed and the locations in which the signs are proposed to be installed. . All signage will be uniform and consistent with the graphic standards of the Airport Authority.

6.4 **Hazardous Materials.** Southwest and the City will endeavor to provide the CMR with information on all known locations of Hazardous Materials. CMR shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Project site, or any other Airport areas or facilities subject to this Agreement, except

in strict compliance with Environmental Laws. The Airport is subject to various permits issued pursuant to Environmental Laws by federal and state agencies ("Environmental Permits") for operations at the Airport. CMR is familiar with these Environmental Laws and Environmental Permits and shall conduct operations in accordance with them. CMR acknowledges that there are significant penalties for submitting false information. CMR shall not be responsible for the handling, removal, or disposal of any Hazardous Materials occurring or existing on the Site, except to the extent such Hazardous Materials were released or brought onto the site by the CMR or any entity for whom the CMR is responsible. If, after the commencement of the Work, Hazardous Materials are discovered at the Site, the CMR shall immediately stop Work in the affected area and report the condition to Southwest. The CMR shall not be required to perform any Work relating to or in the area of Hazardous Materials except as directed by Southwest through a written mutual agreement and CMR shall coordinate with Southwest regarding remediation efforts and mitigate the impact of such remediation on progress of the Work. All of CMR's activities with respect to Hazardous Materials shall be strictly governed by Section 10.4 of the General Conditions and all Applicable Laws. CMR shall comply with all Applicable Laws, including those that govern Hazardous Materials or relate to the protection of human health, safety or the environment. Any fines, penalties, or remediation costs that may be levied against Southwest, the Airport Authority, the City, the Environmental Protection Agency or any other Governmental Authority for the failure of CMR (or anyone for whom CMR is responsible) to comply with Environmental Laws as required herein shall be reimbursed to Southwest within fourteen (14) days of receipt of an invoice from Southwest for such fines or penalties.

**6.5 National Pollutant Discharge Elimination System program ("NPDES").** CMR acknowledges that the Airport is subject to the National Pollutant Discharge Elimination System program ("NPDES") and its regulations relating to stormwater discharges, 40 CFR Part 122, for operations that occur at the Airport. CMR further acknowledges that it is familiar with these NPDES stormwater regulations, that it will conduct operations at the Project in compliance with 40 CFR Part 122 or any applicable NPDES permit, as either may be amended from time to time. CMR will be bound by all applicable portions of the permit and shall meet all deadlines that may be imposed or agreed to by the City or Southwest. Time is of the essence.

**6.6 Safety/Badging:** CMR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work as provided in Article 10 of the General Conditions of the Contract. CMR shall comply with all Southwest security and site ingress/egress procedures and all badging and related background check screening requirements.

**6.7 Assignment of Contracts with Separate Contractors.** Southwest may contract with Separate Contractors to provide Preconstruction and/or Construction Services on various portions of the Project which Southwest may, after execution of such contracts, assign the scope of work included in the contract to CMR as a new component under this Agreement. Any such assignment shall be executed as a Change in the Work as provided in Article 7 of the General Conditions which shall adjust the Contract Time and the FGMP accordingly. No assignment shall be made without the written consent and approval of CMR, which shall not be unreasonably withheld. Upon approval of the assignment, the performance of the assigned contract shall be incorporated as an obligation of the CMR under this Agreement and the assigned contractor shall be considered a Subcontractor for purposes of this Agreement. CMR's overall rights, responsibilities and obligations with respect to the activities of the Separate Contractors are set forth in Article 6 of the General Conditions. The CMR is not eligible to receive any additional compensation or fee markup on the other elements of work performed by Southwest's Separate Contractors unless specifically provided herein.

**6.8 Hardware and Embedded Software.** CMR shall deliver and install all Hardware and Embedded Software in strict conformance with the Drawings and Specifications, the Security Provisions, Applicable Laws, and in complete accordance with Southwest requirements. CMR warrants that Hardware and Embedded Software will be delivered and installed by CMR and its Subcontractors so as to be completely free from defects and in good operating condition.

6.8.1 CMR will deliver to Southwest all end user manuals and other documentation that explains or describes the Hardware and the features, functionality, performance and operation thereof, which end user manuals and other documentation CMR or its subcontractors provides or makes available to its other customers of the Hardware (or, if Southwest is the only CMR customer of the Hardware, such end user manuals and documentation as would be commercially reasonable).

6.8.2 No technical data furnished to the CMR by Southwest will be disclosed to any foreign national, nation, firm, or country, including foreign nationals employed by or associated with CMR or any of its Subcontractors or Suppliers, nor shall any technical data be exported from the United States without CMR first complying with all applicable requirements of the International Traffic in Arms Regulations and the Export Administration Regulations, including the requirement for obtaining any export license if applicable. CMR shall first obtain the written consent of Southwest prior to submitting any request for authority to export any such technical data (provided that nothing herein shall compel Southwest to furnish any technical data).

6.8.3 License.

6.8.3.1 Grant. As of the delivery to Southwest, CMR grants Southwest (and its affiliates) a fully paid-up, royalty-free, non-exclusive, perpetual, irrevocable, sublicensable, worldwide license to execute, run, and use on and with the Hardware all Embedded Software. Such license shall be transferrable with the Hardware.

6.8.3.2 Additional Uses. Southwest (and its affiliates) (including its (and their) personnel) may exercise the license rights granted in this Section 6.8.3 in accordance with the terms and restrictions of this Section. Southwest may, at no additional cost, (a) exercise the license rights granted in this Section for backup and disaster recovery purposes and for training purposes, and (b) allow any of its third party outsourcing providers or other service providers or contractors to execute, run, and use on and with the Hardware all Embedded Software.

6.8.4 Shipping. Unless otherwise prohibited by regulations applicable at the Southwest location, delivery of all Hardware must be “inside delivery” (that is, delivered to the Southwest installation floor or other location specified by Southwest). CMR will immediately give Southwest written notice of any delay in delivery of the Hardware and will expedite delivery, at CMR’s expense, when such delay is a result of the actions or inactions of CMR. CMR will mark, pack, package, crate and store the Hardware to ensure (a) delivery of the Hardware to its ultimate destination in safe and good operating condition, (b) compliance with all requirements of the carrier and destination authorities, and (c) compliance with any special instructions of Southwest. Prior to shipment of Hardware, CMR shall notify Southwest of any rules, regulations, or requirements applicable to the destruction, disposal, transportation, distribution, registration, certification, or labeling of Hardware or its elements ordered, and will

provide Southwest with all Safety Data Sheets (formerly known as Material Safety Data Sheets or MSDSs) applicable to such Hardware or elements.

6.8.5 Substitution. CMR may not substitute any Hardware or change specifications of Hardware that Southwest has ordered unless otherwise agreed to by Southwest in writing in advance. Unless otherwise agreed to by Southwest in writing, all Hardware (and elements thereof) will be (a) of genuine and authentic manufacture and (b) new and unused.

## Article 7

### CONTRACT TIME

7.1 **Date of Commencement.** The Date of Commencement of the Construction Phase of the Work shall be the date specified in the Notice to Proceed with Construction Phase. The Project Substantial Completion Date shall be designated, along with any substantial completion dates for authorized Work Packages, in the approved Project Schedule, as documented by and confirmed in the FGMP Change Order. Notices to proceed with any Work Package shall be set forth in the Work Package Authorization.

7.2 **Time is of the Essence.** Southwest and CMR mutually agree that time is of the essence with respect to the dates and times set forth in the approved Project Schedule as documented by and confirmed in each Work Package Authorization and/or the FGMP Change Order.

7.3 **Liquidated Damages.** CMR shall achieve Substantial Completion of the Project no later than the Date of Substantial Completion set forth in the Project Schedule approved by Southwest. To the extent any Work Package is authorized, CMR shall achieve Substantial Completion of that Work Package by the Substantial Completion date in the Work Package Authorization. CMR further acknowledges that the Work includes constructing in and around Airport runways and taxiways. Accordingly, CMR agrees that if CMR fails to (a) reopen a closed runway or taxiway on or before the scheduled date for reopening a runway or taxiway; or (b) achieve Substantial Completion of the Project on or before the dates of Substantial Completion as so designated in the Project Schedule, it would be extremely difficult and impracticable under the circumstances to ascertain and fix the actual damages Southwest will incur by reason of such failure(s). Southwest and CMR, therefore, agree as follows:

7.3.1 **Project Completion.** If CMR fails to achieve Substantial Completion of Project by the date of Substantial Completion set forth in the Project Schedule, CMR shall pay Southwest, or Southwest will deduct from payments due under this Agreement, as liquidated damages, the sum of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** per Calendar Day for failure to meet the overall Project Substantial Completion Date.

7.3.2 **Runways/Taxiways.** Independent of, and in addition to, the liquidated damages obligations set out in 7.3.1 above, if CMR fails to reopen a closed runway or taxiway according to the Project Schedule (or in any Work Package Authorization), the CMR shall pay Southwest, or Southwest will deduct from payments due under this Agreement, as liquidated damages, the sum of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** for each hour of delay, or any part thereof.

**7.3.3 Work Package Completion.** Independent of, and in addition to, the liquidated damages set forth in 7.3.1 and 7.3.2 above, if a Work Package Authorization contains a particular date of substantial completion and CMR fails to achieve Substantial Completion of the Work by the date set forth in the Work Package Authorization, Southwest may assess liquidated damages for the late completion. In such case, CMR shall pay to Southwest, the liquidated damages on a per day basis as set forth in the Work Package Authorization for failure to meet the Work Package Completion Date.

**7.3.4** Southwest and CMR agree that each amount of liquidated damages provided in this Agreement is neither a penalty nor forfeiture and is a reasonable estimate of damages Southwest would incur as a result of CMR's delay. Southwest and CMR further agree that, all other provisions of the Contract Documents notwithstanding, the Liquidated Damages are intended to compensate Southwest, for consequential damages arising out of CMR's delays in performance and failure to timely achieve Substantial Completion of the Construction Phase Work or any portion or phase thereof under this Agreement. CMR acknowledges that the liquidated damages referred to in this Section are intended to be and are cumulative. CMR further acknowledges that the liquidated damages are intended to compensate Southwest solely for CMR's delayed performance and shall not excuse CMR from liability from any other breach of the Agreement requirements, including any failure of the Work to conform to applicable requirements or other non-delay damages arising as a consequence of the performance of the Work. These non-delay damages shall specifically include but shall not be limited to any actual, direct costs incurred by Southwest in supplementing, accelerating, completing or correcting the Work resulting from CMR's breach of its obligations arising under the Contract and all design and consulting costs also arising therefrom. Nothing contained herein shall preclude Southwest from exercising its other rights and remedies under Article 12 of this Agreement and Article 13 of the General Conditions regarding termination and suspension. Notwithstanding any term of any performance bond furnished by the CMR pursuant to the terms of this Agreement, CMR's performance bond surety expressly agrees and acknowledges that its obligations under the performance bond include the obligation to reimburse or pay Southwest for any unpaid or unreimbursed liquidated damages incurred by CMR pursuant to the terms hereof, subject to the penal limits of the bond.

**7.3.5** In the event this liquidated damages provision is determined to be unenforceable for any reason, CMR agrees that it shall be liable to Southwest for actual damages incurred by Southwest arising out of CMR delays in achieving Substantial Completion within the time required by this Agreement, as it may be modified by approved time extensions and Section 7.4 shall not apply.

## **7.4 Consequential Damages**

**7.4.1 Mutual Waiver.** Notwithstanding any other provision of the Contract Documents and except as set forth in Subsection 7.4.2 herein, CMR and Southwest waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

**7.4.1.1** Damages incurred by Southwest for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

7.4.1.2 Damages incurred by the CMR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of anticipated profit, including that relating to unperformed Work.

7.4.2 **Exclusions from Waiver.** Notwithstanding any other provision of the Contract Documents, CMR and Southwest mutually agree that the following liabilities, obligations and damages are specifically excluded from any waiver of consequential damages set forth in Subsection 7.4.1 herein:

7.4.2.1 Damages or loss of any type incurred by Southwest to the extent such loss or damage is covered by any insurance policy(ies) related to the Project, with amounts recoverable up to policy(ies) limits.

7.4.2.2 Any actual, direct or “non-consequential” damage(s) incurred by Southwest for any reason.

7.4.2.3 Damages covered in, arising out of, or related to the indemnification obligations provided in Section 11.1 herein.

7.4.2.4 Damages, loss, or expense of any type incurred by Southwest not related to a delay in completion of the Work.

7.4.2.5 CMR’s obligation to pay liquidated damages, as set forth in Section 7.3 herein.

## Article 8

### COMPENSATION FOR CONSTRUCTION PHASE SERVICES

8.1 **Contract Sum for Construction Services.** For CMR’s performance of Construction Phase Services as described in Article 6 above, Southwest shall pay CMR, in current funds, the Contract Sum, consisting of the Cost of the Work as defined in Section 9.1 (including CMR’s GCs) plus the CMR Fee, not to exceed the FGMP.

8.1.1 **CMR Fee.** The CMR’s Fee for the Construction Services is THREE POINT TWENTY-FIVE percent (3.25%) of the Cost of the Work. CMR’s Fee for Preconstruction Services is set forth in Section 4.3. No Fee will be paid on insurance or payment or performance bond costs. The CMR’s Fee is subject to adjustment only by executed Change Order. The CMR’s Fee shall be CMR’s complete fee compensation (which includes CMR’s profit, and main office overhead and costs) and, together with the payment for the Cost of the Work shall constitute CMR’s sole reimbursement for such costs, expenses, main office overhead and profit arising from or attributable to the performance of the Work as described herein. The CMR’s Fee will be advanced at the same time as the progress payments described in Article 10, and shall be in accordance with the percentage of the Work which has been completed as of the date of the Application for Payment.

8.1.2 **Fee for Change Orders.** Southwest shall pay the CMR the same percentage Fee as indicated in Subsection 8.1.1 above for its Fee on any approved additive change in a Change Order. No Fee will be added to deductive changes.

**8.2 Final Guaranteed Maximum Price.** The FGMP shall be determined pursuant to the procedure set forth in Sections 5.3 through 5.7 herein. CMR shall comply with all instructions of Southwest as to detailed invoicing necessary to properly account for Costs of the Work and Fee on the Project. The FGMP Change Order and all Work Package Authorizations shall reflect such separate amounts.

8.2.1 The FGMP Change Order shall contain a Schedule of Values to allocate the entire Cost of the Work for the FGMP. Such line item schedule of values shall be in the same format and shall provide the same level of detail as the schedule of values for CMR's Applications for Payment as required by Section 10.1 below.

8.2.1.1 Allowances on which the Cost of the Work for the FGMP is based shall be fully identified in the FGMP Schedule of Values. Allowances may be used in whole, in part, or not at all as determined by Southwest. Whenever costs of the Work included in the Allowance item are more or less than the specified Allowance amount, the FGMP will be adjusted accordingly by Change Order. The CMR shall make no claim nor receive any compensation for anticipated profits, loss of profit, damages, or any extra payment due to any difference between the amount of work actually completed, or materials or equipment furnished, and the quantities for the Allowance.

8.2.2 The Cost of the Work for the FGMP shall be based upon the Drawings and such other Construction Documents described in the List of FGMP Documents which shall be attached as an exhibit to the FGMP Change Order. The Cost of the Work under the FGMP Change Order shall be further based upon a List of the FGMP Qualifications and Assumptions attached to the FGMP Change Order.

8.2.3 The sum of the Cost of the Work and the CMR's Fee is guaranteed by the CMR not to exceed the FGMP set out in the FGMP Change Order, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work for the FGMP Change Order is referred to in the Contract Documents as the "FGMP." Costs which would cause the FGMP to be exceeded shall be paid by the CMR without reimbursement by Southwest.

**8.3 Contingency Expenditures.** As provided in Section 5.9 of this Agreement, the CMR's Contingency has been established to protect the CMR's IGMP and FGMP budget and CMR's Project Schedule against unanticipated costs incurred and unplanned impacts which must be addressed in order to complete the Work, including Work authorized by Change Order, in accordance with the Contract Document. The Contingency is to be used for allowable uses. "Allowable uses" include, without limitation, cost increases associated with: the refinement, development and completion of the Construction Documents; the procurement of the Work; the execution of Work; or rework not caused by the negligence and not covered by insurance proceeds or failure of the CMR to fulfill its responsibilities set forth in the Contract Documents.

8.3.1 Except as agreed in writing by Southwest and the CMR, Contingency is not intended for use in upgrading or enlarging the scope of the Work. To the extent that a Change Order is warranted under the terms of this Agreement for any reason which constitute a change in the scope of the Work, the CMR's Contingency is not to be used.

8.3.2 Notwithstanding anything in the Contract Documents to the contrary, no charge against CMR's Contingency or transfer of CMR's Contingency to a line item shall

be made without Southwest's written consent, such consent not to be unreasonably withheld.

**8.4 CMR's General Conditions Costs ("CMR's GCs").** The FGMP shall not be increased for CMR's GCs (as provided in Article 9 below) as those costs are Costs of the Work. The CMR's GCs for the Project shall not, except for adjustments thereto as provided herein, exceed that amount set forth in **Exhibit A**. The amount of such costs shall not be subject to adjustment except by written Change Order or Construction Change Directive signed by Southwest authorizing said change. The CMR GCs shall be paid in each monthly Application for Payment based on the actual costs incurred for said items during that monthly period. Southwest shall have the right to audit CMR's GCs to determine that all sums billed have actually been expended for such costs as authorized hereunder.

**8.5 Costs in Excess of Final Guaranteed Maximum Price.** If the Cost of the Work, including the CMR's GCs, together with the CMR's Fee, exceed the FGMP, then CMR shall pay all of such excess from its own funds and shall have no claim against Southwest on account thereof. If Southwest is required to pay any such excess for any reason, CMR shall reimburse Southwest such amounts plus interest at the highest rate allowed under Applicable Law, plus all costs of collection, including without limitation, attorneys' fees.

**8.6 Changes in the Work.** Changes in the scope of Work shall only be deemed to have occurred if during the progression of the Work, Southwest directs and/or approves a change that requires work of a materially different nature, character, scope and quality than the general scope of the Work reasonably inferable by CMR as an experienced and prudent contractor/CMR under the Agreement. A Change in the scope of the Work may be accomplished after execution of this Agreement only by Southwest's issuance of a Change Order or Construction Change Directive, subject to the terms and conditions stated in Article 7 of the General Conditions. Changes in the scope of the Work that result in a change in the FGMP or Contract Time, if any, will be reflected in the Change Order ordering CMR to perform such Changes in the Work.

## Article 9

### **COSTS OF THE WORK FOR CONSTRUCTION PHASE**

**9.1 Costs of the Work.** Costs of the Work shall mean costs necessarily incurred by the CMR in the proper performance of the Work. Such costs shall be at the actual costs at rates set forth in this Article 9 and, if not specifically set forth herein, then at rates not higher than the standard paid at the place of the Project except with prior consent of Southwest. Notwithstanding the foregoing, where certain rates are established in the FGMP and mutually agreed by CMR and Southwest, those rates shall govern. The Cost of the Work shall include only the items set forth in this Section 9.1.

**9.1.1 Labor Costs.** Actual wages of construction workers (including necessary overtime) directly employed by CMR to perform construction at the site or, with Southwest's approval only, at off-site workshops. Wages paid must meet the prevailing wage rates established by Applicable Law as appropriate to the particular Work performed. Wages chargeable as labor costs shall not exceed those provided in **Exhibit A**.

**9.1.1.1** Wages or salaries of the CMR's supervisory and administrative personnel when stationed at the Work site as are approved by Southwest, as

indicated in **Exhibit A**. Charges by these personnel will be authorized only when performing their job related duties at the job-site location.

9.1.1.2 No personnel stationed at CMR's home or branch office shall be charged to the Cost of Work without the written approval of Southwest and only at the rates set forth in **Exhibit A**. All non-field office based CMR support personnel who will provide service and advice from time-to-time throughout this Agreement will be considered to be covered by the CMR Fee unless otherwise authorized in writing by Southwest.

9.1.1.3 Costs paid or incurred by the CMR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, pensions, and 401(K) programs, provided such costs are based on wages and salaries included in the Cost of Work. These amounts shall not exceed the rates established in **Exhibit A**.

9.1.1.4 Overtime wages paid to salaried personnel (if approved in writing by Southwest) will be reimbursed at the actual rate of overtime pay paid to the individual, which shall not exceed the individual's straight time rate. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid the overtime worked.

9.1.2 **Subcontractor Costs.** Payments made by CMR to Subcontractors and Suppliers in accordance with the requirements of the subcontracts, any self-performed work proposal or other agreements. The terms of any such subcontracts must conform to the requirements of this Agreement. Any savings under any FGMP subcontracts shall be applied to reduce the overall Cost of the Work under this Agreement, and no additional Fee (profit) will be payable. Payments will not be made unless CMR has received written concurrence from Southwest for Subcontractors, Suppliers or CMR (in case of self-performed work) to perform the Work.

9.1.3 **Actual Costs of Materials, Equipment, Temporary Facilities and Related Items:** Actual costs (including transportation, installation, maintenance, dismantling and removal) of materials, machinery and equipment incorporated or to be incorporated into the Work and/or, with Southwest's prior written approval for items over \$15,000, machinery and equipment purchased for use during construction of the Project (including fuel, operator cost and preventative maintenance, overhauls and repairs). Southwest has the right to confirm that costs submitted do not exceed fair market value and pay only fair market value if costs submitted are not reasonable. Unused excess materials, if any, shall be delivered to Southwest at the completion of the Work and/or any Work Package. Southwest shall not pay for unreasonable quantities of excess materials.

Actual costs, including transportation, delivery charges, fuel costs, operator cost, maintenance, dismantling and removal of materials, Hardware, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMR at the site. Southwest has the right to confirm costs submitted do not exceed fair market value and pay only fair market value if costs submitted are not reasonable. Items not fully consumed during the performance of the Work or any particular Work Package Authorization shall be returned to Southwest unless directed

otherwise. If Southwest directs sale of any equipment, the proceeds from the sale will be credited to the Project.

**9.1.4 Rental Charges.** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CMR at the site, whether rented from the CMR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal. Rental charges for CMR- or Subcontractor-owned equipment and/or equipment rented from third parties will be paid only as outlined in the following subsections:

**9.1.4.1 Rentals for CMR and Subcontractor-Owned Equipment.** Proposed rental rates and related fair market values for CMR owned (affiliate owned, subsidiary owned, Subcontractor-owned or related party owned) equipment with a rental rate of more than \$25,000.00 (total) over the estimated term of the rental and/or rental period over 12 months shall be submitted to and approved by Southwest. The approval shall be in writing and shall be obtained in advance whenever practicable. Southwest may request that this rental approval request include the current hours or mileage reading from the equipment, the projected usage of each piece of equipment and purchase price of that equipment new. The rental rates are subject to audit and adjustment by Southwest.

**9.1.4.2** For equipment values greater than \$25,000, CMR may also be requested to perform a lease versus purchase analysis as set forth herein before a rental decision is made by Southwest. If the probable duration of the proposed rental multiplied by the rental rate exceeds or equals the sum of (i) purchase price of the item in a similar condition, (ii) the cost of purchasing the item (e.g., taxes, registration, and brokerage fees), and (iii) the cost of maintenance included in the rental rate of the item minus (iv) the projected resale value of the item all as determined by Southwest, Southwest shall have the option to purchase items where the analysis indicates purchase to be in the best interest of Southwest. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to Southwest. Any lease/purchase arrangements must have advance concurrence from Southwest before entering into such an arrangement and/or charging lease/purchase rental charges as a reimbursable job cost.

**9.1.4.3 Cap on Aggregate Rentals Paid for CMR-Owned Equipment.** With respect to those items that Southwest elects not to purchase under Section 9.1.4.2 above, the aggregate rentals which Southwest will reimburse for each piece of CMR-owned or Subcontractor-owned special tools or equipment shall not exceed 75% of the fair market value of each item at the time of its commitment to the Work. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for like pieces of equipment will be combined; provided, however, if more than one similar pieces of equipment are working simultaneously, the lower rental cost shall be included in the calculations.

**9.1.4.4** Rental charges for equipment which are not owned by CMR or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work, will be reimbursed at 85% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain

information related to the types of equipment rented CMR shall be based upon actual costs as long as rental rates do not exceed those prevailing in the Denver area. For equipment with a rental rate of more than \$25,000.00 (total) over the estimated term of the rental and/or over 12 months, the CMR may be requested from time-to-time to provide documentation (a lease vs. purchase analysis) to justify the reason for renting the equipment rather than purchasing it. Any lease/purchase arrangements must have advance concurrence from Southwest before entering into such an arrangement and/or charging lease/purchase rental charges as a reimbursable job cost.

9.1.4.5 All costs incurred for minor maintenance and repairs shall be reimbursed at actual costs. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and the cost of such repairs shall not be reimbursable under this Agreement.

9.1.4.6 Rental equipment shall be paid for on an hourly, daily, weekly or monthly rate (or some combination) whichever arrangement is in Southwest's best interest. Payment will not be made for the equipment while it is inoperative due to breakdowns or for time in which no changed work was performed. Payment for rentals will include time required to move equipment to the changed work from the nearest available rental source and to return it to the source. However, no moving, loading, or transportation costs will be paid if the equipment is used for any other portion of the Work. Individual pieces of equipment having replacement value of Five Hundred Dollars (\$500) or less shall be reimbursed at actual cost. CMR shall select one method and utilize that method throughout the Project.

9.1.4.7 All losses resulting from lost, damaged or stolen tools and equipment (including rental equipment) shall be the sole responsibility of CMR and not Southwest, and the cost of such losses shall not be reimbursable under this Agreement.

9.1.4.8 For all equipment worth \$1,000.00 or more when put into service on this Agreement, the CMR shall be required to maintain a detailed equipment inventory of all job-owned equipment. This inventory shall be submitted to Southwest upon request. For each piece of equipment, the inventory should contain: signed documentation of the original receipt of the equipment at the Project site, signed documentation of the removal of the equipment from the Project site, original purchase price or acquisition cost, acquisition date, mileage or hour reading at acquisition and disposition, and final disposition. At the completion of this Agreement, CMR shall transfer possession of the remaining job-owned equipment to Southwest. At Southwest's option, CMR may keep any such equipment for an appropriate credit to job cost, which will be mutually agreed to by Southwest and the CMR.

9.1.5 Normal and reasonable costs associated with setting up and running a Work site office, if such an office is not provided by Southwest. These costs may include general office equipment and supplies; costs of document reproductions, postage and parcel delivery charges; costs for communications services, electronic equipment, and software, directly related to the Work and located at the Project site, with Southwest's prior approval; costs of utilities, including temporary utilities, ice, water containers, cups, fire extinguishers, first aid supplies, safety equipment, street and sidewalk rental, offsite storage space or facilities, temporary facilities, and progress photos all of which shall be paid as part of CMR's GCs as set forth in **Exhibit A**.

9.1.6 Reasonable travel and subsistence expenses of CMR personnel incurred while traveling on Work-related duties which shall be paid as part of CMR's GCs as set forth in **Exhibit A** and shall be paid pursuant to Southwest's Travel Policy which will be made available to CMR upon request. No travel expenses will be reimbursed to CMR's representatives unless CMR complies with Southwest's Travel Policy.

**9.1.7 Miscellaneous Costs:**

9.1.7.1 That portion of premiums for CMR's insurance and payment and performance bonds required by this Agreement. All premiums for any insurance and bonds required by this Agreement shall reflect the net actual costs to the CMR after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc. Southwest will be credited with all insurance policy discounts, rebates or dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to this Agreement. Subcontractor default insurance ("SDI"), if any, shall be paid to CMR as a Cost of the Work based upon an agreed percentage set forth in the FGMP Change Order.

9.1.7.2 No charges for self-insurance will be considered as a reimbursable cost under the terms of this Agreement unless the arrangements for self-insurance are first disclosed in writing to Southwest and approved by Southwest along with a proposed methodology for determining a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle claims related to Work performed in this Project. In no event shall the charges for self-insurance costs exceed the comparable costs of purchasing conventional insurance at conventional net or modified rates of similar volumes of work performed under similar conditions.

9.1.7.3 Payroll taxes imposed by a Governmental Authority that are related to the Work.

9.1.7.4 Fees and assessments for permits, licenses and inspections for which the CMR is required to pay according to this Agreement.

9.1.7.5 Sales, use, or similar taxes imposed by any Governmental Authority that are related to the Work or materials, labor or equipment used in the Work, and for which the CMR is liable.

9.1.7.6 Fees for testing laboratories for tests required by this Agreement to be performed by or on behalf of the CMR.

9.1.7.7 Other necessary and reasonable costs incurred in the performance of the Work if and to the extent approved by Southwest.

9.1.7.8 Cash discounts obtained on payments made by the CMR shall accrue to Southwest and shall be credited as a deduction from the Cost of the Work.

**9.1.8 Discounts, Rebates and Refunds.** CMR shall advise Southwest of all cash and trade discounts, rebates and refunds available during or as a result of

performance of the Work, including, but not limited to, volume and subcontract rebates to which CMR may become entitled based in whole or in part upon the performance of the Work. All discounts, rebates and refunds shall accrue to Southwest, and there shall be a commensurate reduction by Change Order to the FGMP, unless Southwest fails to provide the initial payment for or timely reimbursement to CMR for a payment giving rise to such discounts pursuant to CMR's Application for Payment therefor. All trade discounts, rebates and refunds, and all proceeds from the sale of surplus or salvaged materials and equipment shall accrue to Southwest by way of a reduction in the Cost of the Work and CMR shall take such steps as shall be necessary to secure the same.

9.1.9 **CMR's GCs.** Southwest and CMR agree that those certain reimbursable Cost of Work items under Sections 9.1.1 through 9.1.7 above representing administrative and supervisory personnel costs, direct overhead, and other onsite costs and expenses incurred by CMR in the performance of its administrative, supervisory, and management responsibilities under this Agreement described or itemized in CMR's General Conditions Costs Schedule attached hereto as Exhibit A shall, notwithstanding the other terms of this Article 9, be reimbursable to the CMR subject to the limitations and restrictions expressly set forth in such Schedule.

9.2 **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following:

9.2.1 Salaries and other compensation of CMR's personnel stationed at CMR's principal office or offices other than the Project site office, except as specifically provided in Subsection 9.1.1.2 above.

9.2.2 Expenses of the CMR's principal office and offices other than the site office.

9.2.3 Overhead and general expenses except as provided in Section 9.1.9 above.

9.2.4 CMR's capital expenses, including interest on CMR's capital employed for the Work.

9.2.5 Rental costs of machinery and equipment, except as specifically provided in Section 9.1.4 above.

9.2.6 Costs resulting from the negligence or intentional acts of, or a default hereunder by, CMR or its officers, executives, general managers, estimators, purchasing and contracting agents, superintendents or supervisory personnel, and CMR's other employees, agents, Subcontractors and/or Suppliers, or any other party directly or indirectly employed by CMR and such agent, Subcontractors, or Suppliers, or for whose acts any of them may be liable, including, without limitation, the costs of (1) correcting defective or nonconforming Work, (2) disposal of materials, Hardware, and equipment wrongly supplied, (3) making good any damage to property, (4) remediating and cleaning-up Hazardous Materials that have been spilled or released by CMR as limited by Section 10.4 of the General Conditions, and (5) Avoidable Delays.

9.2.7 Costs which would cause the FGMP, absent a Change Order, to be exceeded.

9.2.8 Costs of removing and replacing any material condemned or rejected as a result of nonconformance with this Agreement.

9.2.9 Costs associated with CMR's failure to apply for, in a timely manner, any and all permits related to the Work for which CMR is responsible pursuant to this Agreement.

9.2.10 Costs associated with any Change Order or Modification, unless expressly approved in writing by Southwest or otherwise allowed by Article 7 of the General Conditions or any other provision of this Agreement.

9.2.11 (a) Costs incurred by CMR resulting from any Avoidable Delay; (b) Costs incurred by CMR resulting from non-compensable Unavoidable Delay precluded by Section 8.4(C)(3) of the General Conditions; (c) Costs incurred due to or resulting from the failure of CMR or its Subcontractors to coordinate their work with that of Southwest's Separate Contractors, if any; and (d) any Costs incurred resulting from CMR's failure to comply with directives of Southwest.

9.2.12 Any acceleration cost, including any and all overtime wages, arising as a result of delay in carrying out the Work caused in whole or in part by (1) CMR's negligence or unexcused failure to satisfy the Contract Documents, or (2) any Subcontractor's negligence or unexcused failure to satisfy the requirements of this Agreement.

9.2.13 Costs resulting from the failure of CMR or any Subcontractor to procure and maintain insurance as provided in this Agreement.

9.2.14 Losses and expenses for items not covered by insurance and any insurance deductibles, except as to Builder's Risk deductibles and then only to the extent the Builder's Risk deductible is incurred as a result of the negligence of Southwest, the City, or the Airport Authority. CMR shall be solely responsible for payment of all other insurance deductibles and losses and expenses to the extent not covered by insurance, and these costs shall not be costs reimbursed by Southwest as a Cost of the Work or otherwise, except as noted in this Section and in Section 11.2.13.

9.2.15 Overtime except as provided in 9.1.1.4 above or otherwise expressly approved in writing by Southwest in advance of the cost being incurred.

9.2.16 Wages or other compensation of CMR's officers, executives, general managers, estimators, auditors, safety personnel, accountants, purchasing and contracting agents and other employees or personnel of CMR, other than those specifically provided in this Agreement.

9.2.17 Costs incurred by CMR for any consultation or services rendered prior to the date hereof unless otherwise authorized in writing by Southwest.

9.2.18 Costs incurred as a result of any inspection or test that reveals nonconforming or defective work not performed in accordance with this Agreement.

9.2.19 Bonuses paid to CMR's personnel or other incentive compensation.

9.2.20 Vacation wages paid to CMR's personnel that were not accrued while such personnel were working on the Project.

9.2.21 Any costs which could have been reasonably mitigated and avoided by CMR or any of its Subcontractors or Suppliers.

9.2.22 Costs resulting from the failure of CMR and/or its Subcontractors and/or its Suppliers to pay any required sales and use taxes. CMR shall be solely responsible for the payment of all such taxes.

9.2.23 Costs for additional compensation not expressly approved, in writing, by Southwest or otherwise allowed by Article 7 of the General Conditions or any other provision of this Agreement.

9.2.24 Costs of CMR's principal office computer services or other outside computer processing services shall be considered overhead and general expense and not considered reimbursable Cost of the Work. CMR should not plan to perform any such computer related services at the field office when such services or functions are normally performed at the CMR's principal or branch office, or at other outside service locations.

9.2.25 Any cost which is not specifically described in Section 9.1 above.

9.2.26 Any taxes based on net income or capital, any franchise taxes, margin taxes, gross receipts, or any excess profit taxes or other taxes levied on CMR and/or its Subcontractors and/or its Suppliers and/or their businesses imposed by any Governmental Authority in connection with this Agreement (and Southwest shall not be responsible for any such taxes). Southwest shall not be responsible for any taxes that it is not explicitly required to pay by this Agreement or the General Conditions.

9.3 Tax Assessments. CMR shall pay and shall be liable for taxes based on CMR's net income or capital or any franchise taxes, margin taxes, gross receipts taxes, excess profit taxes, or other taxes levied on CMR's business imposed by any federal, state or local government in connection with this Agreement. Further, all sales and use taxes incurred on labor, materials and equipment connected with the Work shall be included in the Cost of the Work and remittance to the proper authorities is the exclusive responsibility of CMR. All invoices or requests for payment shall reflect on their face that the amount billed includes sales or use taxes.

If a claim is made against CMR for a Southwest tax liability, CMR will promptly notify Southwest. If requested by Southwest in writing, CMR will, at Southwest's expense, take such action as Southwest may reasonably direct with respect to such asserted liability and will not pay such taxes except under protest. If payment is made, CMR will, at Southwest's expense, take such action as Southwest may reasonably direct to recover payment and will, if requested, permit Southwest in CMR's name to file a claim or commence an action to recover such payment. If all or any part of any such taxes is refunded, CMR will repay Southwest such part thereof as Southwest will have paid.

## Article 10

### **PAYMENTS FOR WORK DURING CONSTRUCTION PHASE**

10.1 **Progress Payments.** Based upon Applications for Payment submitted to Southwest by the CMR, Southwest shall make progress payments to the CMR for services provided during the Construction Phase as provided below and elsewhere in the Contract Documents.

10.1.1 Construction Schedule of Values. CMR has provided with the FGMP Change Order a Construction Schedule of Values attached thereto as **Exhibit F-5**. The Construction Schedule of Values attached as **Exhibit F-5** allocates the Costs of the Work

among the various line items and includes Contingency for costs that are included in the Final Guaranteed Maximum Price but not otherwise allocated to another line item. CMR's Fee and Construction Contingency shall be shown as single separate items. The Construction Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the PMT may require. This Construction Schedule of Values shall be used as a basis for reviewing the CMR's Applications for Payment during the Construction Phase.

**10.1.2 Procedure for Submittal of Applications for Payment.** On or before the 25<sup>th</sup> day of each month, the CMR shall prepare and submit to Southwest a preliminary draft of its Application for Payment (hereinafter referred to as a "Preliminary Application for Payment") seeking payment for the Cost of the Work performed including items purchased through the end of that calendar month and for which payment will be sought. Applications for Payment shall be addressed to Southwest and transmitted as follows:

Southwest Airlines Co.  
Attn: Chris Edwards  
2702 Love Field Drive, HDQ 7FT  
Dallas, TX 75235-1611  
[CorpFacilities.Invoices@wnco.com](mailto:CorpFacilities.Invoices@wnco.com)

The Preliminary Application for Payment shall be based upon the schedules of values for the Work in progress and shall include that portion of the CMR's GCs for the draw period and any CMR Contingency utilized during that period. The CMR shall revise the Preliminary Application for Payment in accordance with any objections or recommendations of Southwest that are consistent with the requirements of the Contract Documents. Such revised Preliminary Application for Payment shall be resubmitted by the CMR to Southwest as the Formal Application for Payment due on or before the 2<sup>nd</sup> day of the month immediately following the month in which the Preliminary Application for Payment was first submitted. The CMR shall also submit, with each Formal Application for Payment, a written narrative describing the basis for any item set forth in the Formal Application for Payment that does not conform to instructions of Southwest in connection with any applicable Preliminary Application for Payment.

**10.1.3** The period covered by each Formal Application for Payment shall be one calendar month ending on the last day of the month immediately preceding the month in which the Formal Application for Payment is received.

**10.1.4** Provided a Formal Application for Payment consistent with the requirements hereof is received by Southwest not later than the 2<sup>nd</sup> day of a month and Southwest approves the Formal Application for Payment, Southwest shall make payment in the amount due to the CMR not later than thirty (30) Calendar Days after approval of the Formal Application for Payment. CMR understands that approval of the Formal Application for Payment by Southwest is required prior to funding any Formal Application for Payment. If a Formal Application for Payment is received by Southwest after the application date fixed above, payment shall be made by Southwest as part of the next monthly progress payment. The payment made to the CMR pursuant to a Formal Application for Payment is the amount approved by Southwest and certified as being due in accordance this Agreement and Article 9 of the General Conditions, less such amount, if any, that Southwest is entitled to withhold from such payment pursuant to Article 9 of the

General Conditions. All Applications for Payment shall comply with Southwest's Application for Payment Template attached as **Exhibit G**.

10.1.5 With each Formal Application for Payment, the CMR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required to demonstrate that cash disbursements already made by CMR on account of the Cost of the Work equal or exceed (1) progress payments already received by the CMR; less (2) that portion of those payments attributable to the CMR's Fee; plus (3) payrolls for the period covered by the present Formal Application for Payment. CMR shall certify in each Application for Payment that it has made payments from the proceeds of prior payments for all amounts due to all mechanic's, Subcontractors, Suppliers, and materialmen, and that it shall ensure like and timely payments from the proceeds of the payment requested.

10.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the CMR on account of that portion of the Work for which the CMR has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the FGMP Change Order amount allocated to the Work as set forth in the Schedule of Values.

10.1.7 **Retainage.** Five percent (5%) of each Application for Payment will be retained by Southwest until the Work has been completed and accepted by Southwest. Southwest will review the progress to date and the remaining work. If it appears that the work will be successfully completed and is progressing on schedule, Southwest may, in its sole and absolute discretion, process subsequent progress payments with the reduced retainage. Southwest may approve payment of any Subcontractor or Supplier retainage amounts upon written request by CMR but only to the extent that the particular Subcontractor or Supplier has fully completed its scope of work and thirty (30) Calendar Days have elapsed since any work, including any punch list work, has been performed by said Subcontractor or Supplier.

10.1.8 **Computation of Application for Payment.** Subject to other provisions of the Contract Documents, the amount of each Application for Payment shall be computed as follows:

10.1.8.1 Take that portion of the FGMP amount properly allocable to completed Work and Materials stored on site as determined by multiplying the percentage completed or stored for each portion of the Work by the share of the FGMP amount allocated to that portion of the Work. Applications for Payment may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

10.1.8.2 Add that portion of the FGMP amount properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by Southwest, suitably stored off the site at a City-owned location as agreed upon in writing.

10.1.8.3 Add that portion of approved Contingency.

10.1.8.4 Add the CMR Fee, which shall be paid monthly as a portion of the Cost of Work completed and invoiced monthly against the total Project cost of work or the total Project Cost. The CMR Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 8.1.1.

10.1.8.5 Deduct retainage of five percent (5%) in each Application for Payment as required by Section 10.1.7 herein.

10.1.8.6 Subtract the aggregate of previous payments made by Southwest.

10.1.8.7 Subtract the shortfall, if any, indicated by the CMR in the documentation required by the General Conditions to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Southwest's accountants in such documentation.

10.1.8.8 Subtract amounts, if any, which Southwest has withheld;

10.1.8.9 Subtract amounts, if any, reasonably necessary to protect Southwest from loss in accordance with Section 10.1.8 herein.

**10.1.9 Withholding Payment.** Southwest may withhold a payment in whole or in part to the extent reasonably necessary to protect Southwest as set forth in Article 9 of the General Conditions. When the reasons for withholding payment are removed, payment will be made for amounts previously withheld. Southwest may not withhold from payment the balance of funds, if any, that are not subject to dispute.

**10.1.10 Subcontractor's Applications for Payment.** CMR shall make payment to Subcontractors within seven (7) Calendar Days of receipt of funds from Southwest. Except with Southwest's prior approval, payments to Subcontractors included in the CMR's Application for Payment shall not exceed an amount for each Subcontractor calculated as follows:

10.1.10.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion in the Subcontractor's schedule of values, less retainage in the amount of five percent (5%). Pending final determination of amounts to be paid to the Subcontractor for changes in the Work, amounts not in dispute may be included even though the Subcontract Sum has not yet been adjusted by Change Order.

10.1.10.2 If approved in advance in writing by Southwest, add that portion of the Subcontract Sum properly allocable to Purchased Items and delivered and suitably stored at the Project site, or at other designated storage locations for subsequent incorporation in the Work less agreed upon retainage. All stored items shall either be stored on site or at another location designated by Southwest. Upon delivery of the Purchased Items to the Project Site (or other designated location) and prior to the incorporation of the Purchased Items, including any taxable services provided pursuant to this Agreement, into the realty or use thereof by Southwest, CMR or any Subcontractor or Supplier, title to such Purchased Items shall transfer, without the necessity of any further action by any of CMR, Southwest, the City, or any other person, from CMR (or Subcontractor, as applicable) to Southwest immediately upon delivery. CMR will post signage at the Project Site (or other

designated location), to the extent practical, to indicate that the Purchased Items are owned by Southwest. Nothing contained herein shall be construed as a waiver or limitation of Southwest to pay for said items as required under the terms of this Agreement.

10.1.10.3 Subtract the aggregate of previous payments by the CMR to the Subcontractor. Subtract amounts, if any, for which Southwest has withheld or nullified a Certificate of Payment by Southwest to the CMR for reasons which are the fault of the Subcontractor.

10.1.10.4 Southwest may approve payment of any Subcontractor or Supplier retainage amounts upon written request by CMR but only to the extent that the particular Subcontractor or Supplier has fully completed its scope of work and thirty (30) Calendar Days have elapsed since any work, including any punch list work, has been performed by said Subcontractor or Supplier.

10.1.11 **Deleted Work.** Southwest may delete from the Work any item or portion of the Work. CMR will be paid for all approved work performed toward the completion of the item prior to omission as provided in the General Conditions, but in no event will the amount paid exceed the FGMP, less the value of the deleted work. CMR shall make no claim, nor receive any compensation for profits, for loss of profit, for damages, or for any extra payment whatever because of any deleted items of Work. CMR shall credit to Southwest all overhead/profit adjustments from deleted Subcontract work in the amounts set forth in Section 7.5 of the General Conditions.

10.1.12 **Extra Work.** Work not covered by Contract Documents but necessary for the proper completion of the Project will be classified as extra work and shall be performed by the CMR when directed in writing by Southwest, in compliance with the Contract Documents. Extra work must be authorized in writing by Southwest before the work is started. Payment for extra work will not be made unless such prior written authorization is obtained. In the event of an emergency or other situation that endangers the Work or endangers public safety, CMR shall perform such extra work necessary to protect the Work or the public.

#### 10.1.13 **Ownership of Property.**

10.1.13.1 Upon submittal of an Application for Payment, CMR warrants that all Work for which Certificates for Payment have been previously issued and payments received from Southwest shall, to the best of the CMR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the CMR, contractors, Subcontractors, material Suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

10.1.13.2 Southwest acknowledges and agrees that CMR, for itself and its Subcontractors and Suppliers reserves all rights and/or claims (including all statutory and constitutional lien rights, as applicable) respecting any and all payments due for items delivered to the Site in accordance with the terms of this Section 10.1.13, as allowed under Colorado law and nothing contained in this Article 10 shall be construed as a waiver, relinquishment or release of any such claims or rights.

10.1.14 In taking action on the CMR's Applications for Payment, Southwest shall be entitled to rely on the accuracy and completeness of the information furnished by the CMR and shall not be deemed to represent that Southwest has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 10.1 or other supporting data, or that Southwest has made examinations to ascertain how or for what purposes the CMR has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by Southwest, will be performed by Southwest's accountants acting in the sole interest of Southwest at such times as Southwest may reasonably direct.

10.1.15 No inspection, order, measurement, approval, modification, payment, acceptance of Work, material, or Hardware (including, but not limited to, acceptance of the entire Work), time extension, or possession of the Work or any part thereof shall be a waiver of any of the terms and conditions of this Agreement, the powers reserved by Southwest, or any right of Southwest to damages or to reject the Work in whole or part. No breach of this Agreement shall be construed a waiver of any other or subsequent breach. All remedies provided in this Agreement shall be cumulative and shall be in addition to all other rights and remedies that may exist at law or in equity.

**10.2 Final Payment.** Final payment shall be made by Southwest to the CMR when the Work as provided by this Agreement has been fully performed by the CMR, including the CMR's responsibility to correct nonconforming work and to satisfy all requirements of the Contract which necessarily survive final payment, and all of the requirements to Final Payment as set forth in Section 10.2.1 and the Contract Documents have been fully met.

**10.2.1 Final Payment Requirements.** CMR shall certify to Southwest that the Contract has been fully performed, including the CMR's responsibility to correct nonconforming Work as provided in Article 12 of the General Conditions, and the following actions have occurred:

10.2.1.1 Final Inspection of the Work as set forth in Article 9 of the General Conditions has occurred;

10.2.1.2 CMR has submitted the documents supporting the Final Application for Payment as required by Section 9.8 of the General Conditions;

10.2.1.3 A Final Accounting for the Cost of the Work has been submitted by CMR and approved by Southwest's accountants and;

10.2.1.4 A Statement of Final Acceptance has been issued by Southwest.

**10.2.2 Prerequisites to the Statement of Final Acceptance.** As a condition precedent to Southwest's issuance of a Statement of Final Acceptance and the issuance of Final Payment, CMR must have provided to Southwest the following:

10.2.2.1 Preliminary Application for Final Payment and Final Accounting. Subsequent to Final Inspection by Southwest of the Work, CMR shall provide a Preliminary Application for Final Payment, segregated as to contract item and Change Order Work and based upon the original Schedule of Values. Together with the Preliminary Application for Final Payment, CMR shall submit to Southwest, a final accounting of the Cost of the Work in a format agreed to by CMR and Southwest. Southwest's accountants

will review and report in writing on the CMR's final accounting within forty-five (45) Calendar Days after delivery of the final accounting to Southwest by the CMR. Based upon such Cost of the Work as Southwest's accountants report to be substantiated by the CMR's final accounting, and provided the other conditions of this Section and Article 9 of the General Conditions have been met, Southwest will issue its Formal Application for Final Payment or notify CMR of the reasons for withholding. All Progress Payments shall be subject to correction in the Formal Application for Final Payment.

10.2.2.2 CMR's Statement of Exceptions. Within fifteen (15) Calendar Days after the proposed Formal Application for Final Payment is received by CMR, CMR shall submit to Southwest a written approval of said Formal Application for Final Payment or a written Statement of Exceptions. The CMR's Statement of Exceptions shall be in sufficient detail for Southwest to ascertain the basis and amount of the exceptions; failure to provide the detail shall be sufficient cause for denial of the exceptions. Any claim of the CMR or the CMR's Subcontractors or Suppliers with respect to the performance or breach of this Agreement or any alterations thereof (except for payment of the balance of the Contract Sum as set forth in the Formal Application for Final Payment) not specifically set forth in the Statement of Exceptions, is waived by the CMR. If the CMR fails to file a Statement of Exceptions within the time allowed, Southwest will infer acceptance of the Formal Application for Final Payment as submitted to the CMR.

10.2.2.3 Objections to Withholding Approvals or Issuance of Formal Application for Final Payment. If Southwest's accountants report the Cost of the Work as substantiated by the CMR's final accounting to be less than claimed by the CMR and the CMR disputes that report, the CMR shall be entitled to proceed through the Claims/Dispute Resolution Process in accordance with Article 14 of the General Conditions. Unless agreed to otherwise, a demand for resolution of the disputed amount shall be made by the CMR within sixty (60) Calendar Days after the CMR's receipt of a copy of Southwest's Formal Application for Final Payment and Accountant's Report. Failure to make such demand within this 60-Calendar Day period shall result in the substantiated amount reported by Southwest's accountants becoming binding on the CMR. Pending a final resolution of any disputed amount, Southwest shall pay the CMR all amounts not in dispute.

10.2.2.4 Southwest's Statement of Final Acceptance. When Southwest finds the Work acceptable, fully performed and in compliance with this Agreement and all exceptions set forth in the Statement of Exceptions have been agreed to or otherwise resolved, the information in the Formal Application for Final Payment has been approved, and Southwest's accountants have approved the Final accounting, Southwest will issue a Statement of Final Acceptance.

10.3 **Amount of Final Payment.** The amount of the Final Payment shall be calculated as follows:

10.3.1 Take the sum of the Cost of the Work substantiated by Southwest's Final Accounting and the CMR's Fee, but not more than the FGMP.

10.3.2 Subtract amounts, if any, for which Southwest withholds, in whole or in part, from the Formal Application for Final Payment upon resolution of the exceptions provided in the Statement of Exceptions or via other provisions of the Contract Documents.

10.3.3 Subtract the aggregate of previous payments made by Southwest.

If the aggregate of previous payments made by Southwest exceeds the amount due the CMR, the CMR shall reimburse the difference to Southwest.

**10.4 No Waiver of Claims by Southwest.** No inspection, order, measurement, approval, modification, payment, acceptance of Work, Hardware, material (including, but not limited to, acceptance of the entire Work), time extension, or possession of the Work or any part thereof shall be a waiver of any of the terms and conditions of the Agreement, the powers reserved by Southwest, or any right of Southwest to damages or to reject the Work in whole or part. Final payment to CMR by Southwest shall not constitute a waiver of any claims by Southwest against CMR or any other person or entity with respect to the Work. The acceptance of Final Payment shall constitute a waiver of all claims by CMR except those previously made in writing and identified by CMR as unsettled at the time of the Formal Application for Final Payment. CMR shall include a like provision in each Subcontract such that acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except as to those previously identified to CMR in writing.

**10.5** Within ten (10) days of CMR's receipt of the Final Payment, it shall provide Southwest with an Unconditional Waiver and Release on Final Payment on the form set forth on Exhibit C-4.

## Article 11

### INDEMNIFICATION/INSURANCE/BONDS

**11.1 INDEMNITY - GENERAL.** CMR AGREES TO INDEMNIFY SOUTHWEST, THE AIRPORT AUTHORITY, AND THE CITY AND COUNTY OF DENVER, AS SET FORTH IN THIS SECTION 11.1:

**11.1.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CMR HEREBY AGREES TO INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS SOUTHWEST, THE AIRPORT AUTHORITY, AND THE CITY AND COUNTY OF DENVER, AND THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, REPRESENTATIVES, DESIGNEES, AGENTS, ELECTED OFFICIALS, AND EMPLOYEES (REFERRED TO INDIVIDUALLY AS AN "INDEMNIFIED PARTY" AND COLLECTIVELY AS THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES EXPENSES, DEBTS, LIABILITIES, COSTS OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR CONSEQUENTIAL DAMAGES, BODILY INJURY, LOSS OF , AND DAMAGE TO PROPERTY) AND ANY AND ALL LIABILITIES, LOSSES, DAMAGES, DEBTS, COSTS, EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS (COLLECTIVELY, "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR CMR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CMR OR ANY SUBCONTRACTOR PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION:**

**11.1.1.1 ANY ACTUAL OR ALLEGED VIOLATION OF ANY LOCAL, STATE OR FEDERAL LAW, ORDINANCE, REGULATION, CODE, STATUTE, OR OTHER APPLICABLE LAW, REGULATION, CODE OR STATUTE BY CMR OR ITS EMPLOYEES OR BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER (OR ANY OF THEIR EMPLOYEES) (THE "SUBCONTRACTOR PARTIES");**

**11.1.1.2 ANY AND ALL LIENS, NOTICES OF CLAIM, AND CHARGES WHICH MAY AT ANY TIME BE FILED AGAINST OR CLAIMED AGAINST SOUTHWEST**

OR OTHER INDEMNIFIED PARTY, OR THE PROJECT SITE ARISING OUT OF THE PERFORMANCE OF THE WORK, EXCEPT TO THE EXTENT THE LIEN, NOTICE, OR CHARGE ARISES OUT OF THE FAILURE OF SOUTHWEST TO PAY AMOUNTS DUE AND OWING UNDER THIS AGREEMENT;

11.1.1.3 ANY CLAIM OF BODILY INJURY, SICKNESSES, DISEASE OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY;

11.1.1.4 ANY ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY OF THE CMR OR ANY OF THE SUBCONTRACTOR PARTIES;

11.1.1.5 ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF THE CMR OR ANY SUBCONTRACTOR PARTY, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE, HIS/HER ESTATE, OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE CLAIM");

11.1.1.6 ANY CLAIM OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH ANY INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH THE CMR OR ANY DESIGN OF THE WORK BY OR THROUGH THE CMR (TO THE EXTENT CMR HAS ASSUMED DESIGN RESPONSIBILITIES UNDER THE CONTRACT DOCUMENTS) OR IN CONNECTION WITH ANY MEANS, METHOD OR PROCESS USED BY THE CMR IN THE PERFORMANCE OF THE WORK OF THE CONTRACT (HEREINAFTER REFERRED TO AS AN "INTELLECTUAL PROPERTY INFRINGEMENT CLAIM");

11.1.1.7 DAMAGE, LIABILITY, LOSS, PENALTY, CHARGE, COST, DEFICIENCY (INCLUDING BUT NOT LIMITED TO) COSTS AND EXPENSES INCIDENT TO MONITORING, REMEDIAL ACTIONS, PROCEEDINGS OR PURSUANT TO THIS AGREEMENT OR RESULTING FROM OR RELATED TO THE FAILURE OF CMR OR ANY SUBCONTRACTOR PARTY TO PERFORM OR OBSERVE ANY TERM OR PROVISION TO BE PERFORMED OR OBSERVED BY THE CMR AS SET FORTH IN THIS AGREEMENT; AND ANY OTHER NEGLIGENT OR WRONGFUL ACT OR OMISSION CAUSED IN WHOLE OR IN PART BY THE CMR, ITS SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CMR OR ANY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS CMR MAY BE LIABLE;

11.1.1.8 ANY OTHER NEGLIGENT OR WRONGFUL ACT OR OMISSION OF THE CMR OR ANY OF THE SUBCONTRACTOR PARTIES;

EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT OF SOUTHWEST, ANY INDEMNIFIED PARTY/PARTIES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF SOUTHWEST.

11.1.2 The indemnification obligations set forth in this Section 11.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or to the CMR under applicable workers' compensation laws and shall not

be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described herein.

11.1.3 Any waiver or limitation on recovery of consequential damages shall not apply to the amount or type of damages recoverable by an Indemnified Party under Section 11.1 arising from a claim brought by any person or party against an Indemnified Party.

11.1.4 **Reimbursement of Attorney's Fees.** To the extent Southwest or any Indemnitee incurs attorney's fees and/or costs in defense of any claim that arises out of or results from the negligence or fault of CMR, its agents, representatives, Subcontractors, or Suppliers, CMR shall reimburse Southwest and Indemnitees their reasonable attorneys' fees in such amount equal to the degree or percentage of negligence or fault attributable to CMR and its agents, representatives, Subcontractors and suppliers.

11.1.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 11.1 such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

11.1.6 **THE PROVISIONS OF THIS SECTION 11.1 SHALL SURVIVE THE TERMINATION, COMPLETION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF INSURANCE OBTAINED BY SOUTHWEST, THE INDEMNIFIED PARTIES, CMR OR ANY SUBCONTRACTOR, OR SUPPLIER. IN ALL CONTRACTS BETWEEN CMR AND SUBCONTRACTORS AND/OR SUPPLIERS, CMR SHALL CAUSE ALL SUBCONTRACTORS/SUPPLIERS TO INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS THE SOUTHWEST, THE CITY AND THE INDEMNIFIED PARTIES FROM ANY CLAIMS OR CAUSES OF ACTION ARISING OUT OF THE PERFORMANCE OF SERVICES OR WORK PROVIDED BY SUCH SUBCONTRACTOR(S)/SUPPLIER(S) TO THE SAME EXTENT THAT CMR IS REQUIRED TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SOUTHWEST, THE CITY, AND THE INDEMNIFIED PARTIES IN THIS SECTION.**

11.2 **Insurance.** CMR shall maintain in effect at all times during the full term of this Agreement, including during Preconstruction Services, the insurance coverages specified below, with limits not less than those set forth herein under forms of policies reasonably satisfactory to Southwest and with insurers licensed to do business in Colorado. Insurers providing coverage shall have and A.M. Best rating of A-/VII or higher. None of the requirements contained herein as to types, limits or Southwest's approval of insurance coverage to be maintained by CMR is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by CMR under the Agreement or otherwise provided by law. In the event of any failure by CMR to comply with these requirements Southwest may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to CMR, purchase such insurance, and deduct the cost of such insurance from CMR's progress payments, provided that Southwest shall have no obligation to do so and if Southwest shall do so, CMR shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. CMR's insurance coverages shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or

other policy of insurance maintained by Southwest or the City. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by Southwest. The obligations set forth in this Section 11.2 shall survive the expiration, completion, abandonment and/or termination of this Agreement.

**11.2.1 Workers Compensation Insurance/Employer's Liability.** CMR shall procure and maintain workers compensation coverage that provides the statutorily-required benefits under the laws of the state of Colorado and employers liability insurance with limits of not less than \$1,000,000 bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit) and \$1,000,000 for bodily injury by disease (each employee). The policy shall be endorsed to include "all states" coverage and a waiver of subrogation in favor of Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees.

**11.2.2 Commercial General Liability Insurance.** CMR shall procure and maintain commercial general liability (CGL) insurance with limits of not less than \$10,000,000 per occurrence, \$10,000,000 annual general aggregate and \$10,000,000 annual products-completed operations aggregate. Coverage shall be provided on ISO 2001 edition of Commercial General Liability Coverage Form CG 00 01 10 01 (or a substitute form providing equivalent coverage and acceptable to Southwest). The CGL insurance general aggregate limit shall apply separately to this Project and CMR shall provide evidence of same through ISO Endorsement CG 25 03 05 09. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, contractual liability, property damage, and bodily injury and death resulting therefrom. Southwest, the City, and all Indemnified Parties shall be included as additional insureds under this policy, using ISO Additional Insured Endorsements CG 20 10 10 01 "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and CG 20 37 10 01 "Additional Insured - Owners, Lessees or Contractors - Completed Operations" or other endorsements providing equivalent coverage, to the full extent allowed under Colorado law. This policy shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. The CGL general aggregate limit shall apply separately to the Project. There shall be no endorsement or modification of the CGL limiting the scope of, or excluding coverage for, damage to aircraft (whether owned by Southwest or a third party), operations at airports, pollution, explosion, collapse, underground property damage, or employment-related practices. The following exclusions/limitations are prohibited:

- Amendment of Insured Contract Definition ISO CG 24 26
- Classification or Business Description
- Contractual Liability Limitation ISO CG 21 39
- Endorsement modifying the Employer's Liability exclusion or deleting the exception to it
- "Insured vs. Insured" except Named Insured vs. Named Insured
- Known, Continuous or Progressive Injury or Damage
- Limitation of Coverage to Designated Premises or Project ISO CG 21 44
- Punitive, Exemplary or Multiplied Damages

CMR shall provide a copy of the CGL Schedule of Forms and Endorsement page(s) of the policy to verify the coverages required, that the endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. This insurance shall apply as primary insurance with respect to any other insurance or self-

insurance programs maintained by Southwest. CMR shall maintain CGL insurance with coverage as specified in this Paragraph until all claims arising out of the Work are barred by applicable statutes of limitations and repose.

**11.2.3 Automobile Liability Insurance.** CMR shall maintain automobile liability insurance with a policy limit of not less than \$10,000,000 combined single limit each occurrence for bodily injury and property damage for vehicles airside and \$2,000,000 each accident for all other vehicles. Total limit requirements can be secured through a combination of primary and excess coverages. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Business auto coverage shall be written on the most recent edition of ISO form CA 00 01 or a substitute form acceptable to Southwest providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Southwest. Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees, shall be included as additional insureds on this policy through an endorsement acceptable to Southwest. If CMR or any of its Subcontractors or any supplier transports any hazardous materials, substances or waste, such party's or parties' automobile liability policy shall include endorsement forms MCS-90 and ISO CA 99 48 or equivalent endorsements providing coverage for environmental and pollution claims.

**11.2.4 Excess Liability Insurance.** CMR shall maintain excess coverage with a limit of not less than \$50,000,000 per occurrence, \$50,000,000 annual general aggregate, and \$50,000,000 annual products-completed operations aggregate, on a "following form" basis, in excess of limits specified for Employer's Liability, CGL, and Automobile Liability, and with respect to CGL, for the same duration as required by Section 11.2.2. Continuing excess coverage shall include liability coverage for bodily injury and property damage arising out of or related to insured's completed work.

**11.2.5 Professional Liability Insurance.** CMR shall maintain Professional Liability coverage with limits no less than \$10,000,000 each claim/\$10,000,000 annual aggregate, issued by an insurance carrier approved in advance by Southwest and licensed to provide such coverage in Colorado to insure from and against all negligent acts, errors, and omissions in the professional services performed by CMR, and its agents, representatives, employees, Subcontractors and/or sub-subcontractors. This insurance shall extend coverage to loss of interest, earnings, profit, use and operations interruption, and other special indirect and consequential damages. Upon execution of the Agreement and at every date of renewal of that policy, the CMR shall cause a Certificate of Insurance to be issued. Coverage shall provide full prior acts coverage or a retroactive date not later than the date services are first performed by or for CMR in connection with the Project. This insurance shall be maintained until all claims arising out the Preconstruction Services and Construction Services are barred by applicable statutes of limitation or repose. Any deductible or premium for this coverage shall be the sole responsibility of CMR and shall not be paid as a Cost of the Work.

**11.2.6 Aircraft Liability Insurance.** Not Used.

**11.2.7 Environmental Impairment/Pollution Liability Insurance.** CMR shall provide Pollution Liability coverage for the Project with policy limits of \$10,000,000 per occurrence/\$10,000,000 annual aggregate. CMR's Pollution Liability shall cover a

pollution event or release resulting from the CMR's or any Subcontractor's activities under and during the term of this Agreement including at least the following coverages: (i) coverage for the activities of CMR, Subcontractors, Suppliers and vendors on the Project, (ii) coverage for asbestos abatement and liability arising from the encapsulation, removal, handling, storage, transportation and disposal of asbestos-containing material, (iii) coverage for receiving, dispensing, transporting, removal and handling of aviation fuels or any other pollutants, and (iv) coverage for any other operations involving pollutants. Pollution Liability coverage shall include mold, mold remediation and diminution in value resulting from mold as it pertains to work performed by the CMR or its Subcontractors, and environmental impairment liability with clean-up costs. This policy shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees, shall be included as additional insureds on this policy through an endorsement acceptable to Southwest. Such insurance coverage and additional insured status shall be maintained continuously during the term of the Agreement and the performance of the Work, and covering completed operations until the expiration of all applicable statutes of limitations and repose for liability arising out of the Work.

**11.2.8 Installation Floater.** CMR shall provide a policy of insurance to cover machinery and equipment of all kinds during transit, installation and testing at the Project. Such insurance shall provide coverage on an "all risk" basis from any external cause, door to door, irrespective of conveyance, with limits set to be the maximum any one shipment inclusive of freight. Coverage will be extended to include consequential loss following physical loss or damage to "critical items", as may be agreed by underwriters. "Critical items" refers to cargo that, if damaged by a peril insured against, might cause a delayed start-up to the Project because of the length of time required to replace or repair an entire item. Coverage shall start when the items to be installed are transported to the Project and shall remain in place until final acceptance by Southwest. Southwest, the Airport Authority, the City and County of Denver, CMR, and Subcontractors performing Work shall be named insureds. This policy shall contain an endorsement that the policy is primary to any other insurance available to Southwest with respect to claims arising under this Agreement.

**11.2.9 Builder's Risk Insurance.** Builder's risk coverage will be provided by CMR. Such insurance shall be evidenced by the kind of policy which does not have to be adjusted or reported upon periodically but provides constant limits of insurance at full 100% of all insurable values as they are created during construction by performance of this Agreement. The insurance shall apply on a replacement cost basis and shall name Southwest, the Airport Authority, the City, the CMR, and all Subcontractors and sub-subcontractors as insureds. Southwest shall notify CMR in writing of any loss payees that may need to be included in such coverage.

**11.2.9.1** The insurance shall be written to cover all risks of physical loss, and shall insure at least against the perils of fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion and extended coverage including flood and earthquake and shall include coverage for physical loss or damage including, without duplication of coverage, theft, vandalism, terrorism and malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for

the CMR's services and expenses required as a result of such insured loss. The policy shall include coverage for explosion, collapse and underground (XCU).

11.2.9.2 Builder's Risk coverage will include coverage for consequential loss following physical loss or damage to "critical items" and for "soft costs" including, but not limited to, Southwest's losses of use, income, profit, financing, additional costs to continue construction and meet contract dates, interest on monies borrowed to finance construction, taxes, assessments, legal, accounting and engineering fees, insurance premiums, and other consequential losses. Southwest may define any risks or other special hazards that are applicable to the Project that are not otherwise covered by the Builder's Risk insurance required herein and CMR shall, if reasonably possible, include such coverage in the policy provided pursuant to this paragraph or, with the express written approval of Southwest, purchase additional insurance to cover such risks which shall then be paid as a Cost of the Work unless previously included in CMR's General Conditions Costs. All such policies shall include Southwest, CMR and all levels of Subcontractors as insureds and shall insure for physical loss or damage.

11.2.9.3 All insurance provided under this Section shall provide, by endorsement or otherwise, that the insured property may be occupied and that the insurance will remain in full force and effect until the property is fully accepted by Southwest. Southwest may define any risks or other special hazards that are applicable to the Project and include such coverage in the policy provided pursuant to this Section.

11.2.9.4 The insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the premises.

11.2.9.5 Loss under the Builder's Risk insurance shall be made payable jointly to Southwest, the CMR, and any loss payees that may be identified by Southwest. Southwest and CMR shall pay other insureds their just shares of insurance proceeds received, and by appropriate agreements, written where legally required for validity, shall require CMR to make payment to its Subcontractors in a similar manner.

11.2.10 **CMR's Equipment Policy.** Any insurance policy covering CMR's or any Subcontractor's equipment against loss by physical damage shall include an endorsement waiving the insurer's right of subrogation against Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees. Such insurance shall be CMR's and any Subcontractor's sole and complete means of recovery for any such loss. Should CMR or any Subcontractor choose to self-insure this risk, it is expressly agreed that CMR and any Subcontractor hereby waives any claim for damage or loss to said equipment against Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees.

11.2.11 **Additional Insured Status.** Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents and employees, shall be included as additional insureds on all policies except worker's compensation and professional liability policies. CMR shall provide to Southwest certificates of insurance and additional insured endorsements enumerating, among other things the additional

insured or insured status of Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents, and employees. Each policy, other than worker's compensation and any professional liability shall contain a severability of interest clause stating "it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability." Each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

**11.2.12 Evidence/Proof of Insurance.** Upon execution of this Agreement, CMR shall provide to Southwest a copy of the certificates of insurance and the required additional insured endorsements before any Work is performed on the Project and as coverage renews. The maintenance in full current force and effect of all required coverages shall be a condition precedent to Southwest's obligation to pay CMR. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give Southwest notice at least thirty (30) days prior to any cancellation or nonrenewal. In addition, the insurer will endeavor to provide Southwest with written notice at least thirty (30) days prior to any other lapse in the policy. CMR shall provide to Southwest a complete copy of each required insurance policy upon written request by Southwest. CMR, upon selection, shall provide to Southwest certificates of insurance evidencing such coverages and enumerating, among other things, the additional insured status of Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents and employees, as required herein. A copy of the certificates of insurance shall be provided to Southwest within ten (10) days of notice of intent to award.

**11.2.13 Premiums/Deductibles.** Southwest shall pay reasonable premium charges for CMR's insurance coverages as set forth in Section 9.1.7.1 above. CMR shall be responsible for payment of all insurance deductibles and any losses and expenses with respect to items not covered by insurance. These costs shall not be reimbursed by Southwest as a Cost of the Work or otherwise. As to Builder's Risk, CMR shall be responsible for all deductibles; however, CMR shall not be responsible for any Builder's Risk deductible incurred as a result of a loss caused by the negligence of Southwest, the City or County of Denver, or the Airport Authority.

**11.2.14 CCIP Enrollment/Off-Site Coverages.** In the event CMR furnishes the required CGL insurance through a CCIP program, CMR shall procure, and shall require its Subcontractors of every tier to procure, insurance coverages independent of and in addition to the CCIP to cover services and activities of Suppliers, materialmen, vendors, haulers, truckers, and owner/operators whose employee(s) perform no on-site work or are engaged solely in the loading, unloading, stocking, testing, or hauling of equipment, supplies, or materials " ("Off-Site Workers"). These coverages shall at least include worker's compensation/employer's liability, CGL, automobile, excess liability, pollution, and professional liability coverages for services and activities not covered by the CCIP and/or non-enrolled Subcontractors and Off-Site Workers, all in form and with terms, conditions and limits acceptable to Southwest. CMR will be responsible to see that each Subcontractor, vendor, consultant or Off-Site Worker providing services to the Project enrolls in the CCIP and complies with its requirements, including completion of the appropriate enrollment form. Off-site coverages will not be reimbursed as a Cost of the Work.

**11.2.15 Insurance Required of Subcontractors.** If a CCIP is not used on the Project, CMR shall require by written contract that each of its Subcontractors maintain insurance set forth in 11.2.15.1 below to cover their operations performed with respect to this Agreement, including any Preconstruction Services. If a CCIP is provided and Subcontractors are enrolled, CMR shall provide and shall be responsible for requiring all Subcontractors (of every tier) provide, insurance coverages with policy limits as designated by Southwest for off-site operations and operations not covered by the CCIP. Southwest, the Airport Authority, and the City and County of Denver, and their officers, directors, agents, and employees, shall be listed as additional insureds on all policies except professional liability and worker’s compensation and, with respect to the CGL and excess liability coverage, CMR and its Subcontractors shall provide additional insured status to such parties for ongoing and products-completed operations by endorsements referenced in Section 11.2.2 or otherwise acceptable to Southwest.

11.2.15.1 Unless reduced limits are approved in advance, in writing, by Southwest on an individual basis, each Subcontractor must provide:

Insurance	Policy Limits
Worker’s Compensation/Employer’s Liability Insurance	Statutory Bodily Injury by Accident \$1,000,000 (accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability (“CGL”)  Coverage shall be primary and non-contributing with any other insurance available to Southwest. Aggregate limits of the insurance shall be provided on a per-project basis.	\$5,000,000 per occurrence \$5,000,000 annual general aggregate \$5,000,000 annual products-completed operations aggregate
Automobile Liability	\$10,000,000 each accident for vehicles used on runways and taxiways; \$5,000,000 each accident for vehicles used in aircraft ramp areas; \$1,000,000 each accident for all others
Excess Liability  Excess shall “follow form” of underlying coverages specified for Employer’s Liability, Commercial General Liability and Automobile Liability	\$10,000,000 each occurrence/combined aggregate in excess of limits specified for Employer’s Liability, Commercial General Liability and Automobile Liability.
Pollution Liability	\$2,000,000 per occurrence/annual aggregate

Insurance	Policy Limits
Coverage shall be provided for a minimum of five (5) years following Substantial Completion	
Professional Liability	\$5,000,000 each claim/\$5,000,000 annual aggregate
Construction Equipment/Tools  This coverage shall include an endorsement waiving the insurer's right of subrogation against Southwest, the Airport Authority, and the City and County of Denver	

The CGL policies shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. Each policy shall contain a severability of interest clause stating "it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability."

The CGL policies shall be endorsed so that the annual general aggregate applies separately to the Project. Subcontractors' (of every tier) CGL insurance and required additional insured coverages shall be maintained continuously during the term of the Agreement and the performance of the Work, and covering completed operations until the expiration of all applicable statutes of limitations and repose for liability arising out of the Work. The limits of all required insurance may be adjusted by Southwest in accordance with the nature of each Subcontractor's operations and, in each case, must be submitted to Southwest for approval before any work commences under the contract with the Subcontractor or materials ordered from a Supplier. Insurers providing coverage shall have an A.M. Best rating of A-/VII or higher. Subcontractors and Suppliers shall be required to provide to CMR, who shall provide to Southwest, copies of each Certificate of Insurance and the required additional insured endorsements from each entity before the that entity is permitted to begin providing services or Work in relation to the Project and as coverage renews. The insurance policies shall incorporate a provision or endorsement requiring written notice to Southwest at least thirty (30) days prior to any cancellation or nonrenewal. CMR shall obtain and provide to Southwest a complete copy of each required Subcontractor insurance policy upon written request by Southwest. Southwest shall not be responsible for payment of any deductible or self-insured retention required under any policy furnished hereunder.

**11.3 Waiver of Subrogation.** Each policy of insurance procured by CMR and its Subcontractors (of every tier) as indicated above, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against Southwest, the Airport Authority, the City and County of Denver, and their officers, directors, agents and employees.

**11.4 Bonds.** CMR shall furnish Payment and Performance Bonds and comply with the terms and conditions of the requirements for "Payment and Performance Bonds" as set forth in Section 11.2 of the General Conditions. Payment and Performance Bonds shall cover faithful performance of this

Agreement and payment of obligations arising thereunder and shall be issued to comply with Colorado law. Bonds may be obtained through the CMR's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Contract Sum.

## Article 12

### TERMINATION AND/OR SUSPENSION

**12.1 Termination.** This Agreement may be terminated as provided in Article 13 of the General Conditions except as provided in Section 4.6 of this Agreement as to Preconstruction Phase services and individual Work Packages or in the event the parties cannot agree on an FGMP. Amounts recoverable upon termination or suspension of the Contract shall be as provided in Section 4.6 of this Agreement or Article 13 of the General Conditions as applicable.

**12.2 Suspension.** Except as provided in Section 4.6 of this Agreement which provisions shall govern the circumstances for suspension or termination for Preconstruction Services and Work Packages, the Work may be suspended by Southwest as provided in Article 13 of the General Conditions.

## Article 13

### MISCELLANEOUS PROVISIONS

#### 13.1 Authorized Representatives

**13.1.1 Southwest's Representatives.** Southwest designates the following individuals as its Authorized Representatives ("Southwest's Authorized Representatives") who shall have the authority to act within the scope of the authority given herein below:

Chris Edwards  
2702 Love Field Drive  
Dallas, TX 75235  
Phone: 469.713.7397

Southwest's Authorized Representatives shall have authority to receive and transmit correspondence and direct the day-to-day operations and decisions at the Project on behalf of Southwest.

**13.1.1.1 Expenditure of Funds.** No member of the PMT shall have the authority to bind Southwest or any of its officers, directors, agents, representatives, successors or assigns to the payment of any Project funds. Any Change Order, Modification, or any other document requesting or requiring the expenditure of Project funds must be executed by one or more of the following individuals:

John Zuzu                      Authority not to exceed \$10,000,000

Jason Van Eaton              Authority not to exceed \$15,000,000

Paul Cullen                      Authority not restricted

Mark Shaw

Authority not restricted.

CMR acknowledges that any document not executed as provided hereunder is null and void.

13.1.1.2 Southwest may delegate some or all authority in writing to other designated individuals and/or may change the authority of previously designated individuals. Such written delegation of authority shall be delivered to the CMR in accordance with the requirements of Section 13.2 hereof within five (5) Business Days of any change.

13.1.2 **CMR's Representatives.** CMR designates the individual(s) listed below as its Authorized Representative(s) ("CMR's Authorized Representative(s)"), which have the authority and responsibility for representing the CMR as set forth in the Contract Documents. Key Members of the CMR's Representatives and their authority are:

13.1.2.1 Jobsite Point of Contact, Thomas Assante, has authority to execute all Applications for Payment and Change Orders. The jobsite point of contracts include:

Pre-construction Manager:  
Daniel Herr  
2401 15th Street, Suite 350  
Denver, CO 80202  
Phone: 720.908.8462

Senior Project Manager:  
Thomas Assante  
2401 15<sup>th</sup> Street, Suite 350  
Denver, CO 80202  
Phone: 602.501.9912

Sr. Superintendent:  
James Comstock  
2401 15<sup>th</sup> Street, Suite 350  
Denver, CO 80202  
Phone: 303.980.7435

And

Project Executive:  
Joe Brunzman  
2401 15th Street, Suite 350  
Denver, CO 80202  
Phone: 602.980.7435

has overall authority with respect CMR's rights and responsibilities under this Agreement.

The CMR Authorized Representative may delegate some or all of such authority in writing to designated individuals. Such written delegation of

authority shall be delivered to Southwest within five (5) Business Days of any delegation, in accordance with the requirements of Section 13.2 hereof. CMR shall furnish only skilled and properly trained staff for performance of the Work. The key members of the CMR's staff shall be persons agreed upon with Southwest, which agreement shall not be unreasonably withheld. Such key members of the CMR's staff shall not be changed without the written consent of Southwest, unless such person becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the CMR.

**13.2 Written Notice.** Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail or facsimile transmission, addressed to the individuals identified in Section 13.1 above, Such notice shall be deemed effective upon personal service, by proof of fax receipt, or three (3) Business Days after deposit in the United States mail, postage prepaid. Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**13.3** This Agreement represents the entire understanding of Southwest and CMR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.

**13.4 Assignment.** This Agreement shall be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CMR shall not assign, transfer or otherwise substitute its interest in this Agreement, or any of its obligations hereunder, without the prior written consent of Southwest, the City, and CMR's surety (unless, in the case of the surety, the surety has waived its right of notice of reassignment). If the CMR attempts to make such an assignment without Southwest's consent, CMR shall nevertheless remain legally responsible for all obligations under this Agreement.

**13.5 Instruments of Service.** All Drawings, Specifications and other documents and electronic data furnished by CMR to Southwest under this Agreement are deemed to be Instruments of Service. Except to the extent such Instruments of Service contain proprietary components or applications the CMR or its Subcontractors and lower tier subcontractors and Suppliers routinely use in the course of their business or to the extent such Instruments contain proprietary components, Hardware, materials and applications not owned by and for which CMR or its Subcontractors and lower tier subcontractors and Suppliers holds limited rights such as a use license, Southwest shall own all Instruments of Service. CMR may utilize all Instruments of Service for the purposes of Construction and Preconstruction services on the Project and shall provide written and electronic copies to the PMT. Except to the extent such Instruments of Service contain proprietary components or applications the CMR or its Subcontractors and lower tier subcontractors and Suppliers routinely use in the course of their business or to the extent such Instruments contain proprietary components, Hardware, materials and applications not owned by and for which CMR or its Subcontractors and lower tier subcontractors and Suppliers holds limited rights such as a use license, CMR shall be prohibited from using the Instruments of Service or any one of them for any purpose other than for this Project.

**13.6 M/WBE Participation.** To ensure participation of minority-owned and women-owned businesses, Southwest has established an M/WBE participation goal of 25% for the Project.

CMR, its Design Professionals and its Subcontractors shall be required to report participation in support of the overall Project goal on a quarterly basis.

13.7 Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement or any provision can be interpreted to give effect to the intentions of the parties.

13.8 Multiple copies of this Agreement may be executed by the parties and the parties agree that this Agreement of file with Southwest is the version of this Agreement that shall take precedence should any differences exist among counterparts of this Agreement.

13.9 Any disputes arising hereunder shall be governed by the laws of the State of Colorado and each Party hereto submits itself to the jurisdiction of the courts of the State of Colorado. Exclusive jurisdiction and venue of any dispute arising hereunder shall be in Denver County, Colorado. CMR represents that it is licensed by the state of Colorado to provide the Services required by this Agreement.

13.10 The duties and obligations imposed by this Agreement, and the rights and remedies available thereunder shall be in addition to and not a limitation of the duties, obligations, rights and remedies otherwise imposed or available by law. A party's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. A party's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.

13.11 CMR is an independent contractor and not an employee, agent or other representative of Southwest, the Airport Authority or the City or County of Denver. Nothing in this Agreement shall be construed to create any relationship of joint venture, partnership or any other association of any nature whatsoever between Southwest and the CMR or between the Airport Authority and the CMR, other than that of CMR acting as an independent contractor of Southwest. Southwest shall have the right to direct the CMR as provided for in this Agreement. This limited right of oversight shall not reduce or abrogate the CMR's liability for any and all damages or injury to persons or property that may arise directly or indirectly from the CMR's execution of the Work.

13.12 The Airport Authority shall be a third-party beneficiary of this Agreement between Southwest and CMR. Southwest shall be a third-party beneficiary of all contracts between the CMR and any other design or engineering entities, Subcontractors, Suppliers, and other agreements between the CMR and entities for which the subject matter of the contract includes the Work.

13.13 The CMR shall be responsible to Southwest for the performance, acts, and omissions of its employees, agents and representatives, and for the performance, acts, and omissions of all Subcontractors and Suppliers of any tier and their agents, representatives and employees.

13.14 CMR shall observe and comply with all Applicable Laws, regulations and ordinances. CMR shall possess and maintain all necessary licenses, permits, certificates and credentials required by Federal, State, Local and all other appropriate governmental agencies, including any certification and credentials required by Southwest. Failure to maintain the licenses permits, certificates and credentials shall be deemed a material breach of this Agreement and constitutes grounds for termination of this Agreement by Southwest.

**13.15 Examination of Books and Records.** CMR shall keep all records and comply with Southwest's audit provisions in accordance with Southwest Audit Provisions attached hereto and incorporated herein as **Exhibit D**.

**13.16 Background Check Screening Requirements.** CMR and all Subcontractors shall comply with Southwest's Background Check Screening Requirements set forth in **Exhibit J**. All personnel shall conspicuously display a photo identification badge which complies with all requirements of Southwest and any Governmental Authorities. All employees of CMR or any of CMR's Subcontractor that will (i) receive a security badge (SIDA or Non-SIDA); (ii) receive a Southwest contractor ID ("xID"); and/or (iii) have access to Southwest's Systems must pass a criminal background check at CMR's expense as detailed herein and in **Exhibit J**. CMR shall include these background screening requirements in all subcontract agreements entered into for any and all Services under this Agreement. CMR and all Subcontractors shall comply with all notice, disclosure, authorization, and other requirements under the Fair Credit Reporting Act. CMR and all Subcontractors shall also follow Equal Employment Opportunity Commission regulations and guidance and all other federal, state and local laws related to employee background checks. Background checks will be performed by a National Association of Professional Background Screeners ("NAPBS")-accredited background vendor of CMR's choosing. Background checks must be completed no more than ninety (90) days before CMR begins performing any Work or other services for Southwest. Southwest reserves the right to deny, to any employees of CMR or any Subcontractor who do not pass the aforementioned background check, access to any facilities, property or technology systems owned or operated by Southwest. CMR shall indemnify, defend, and hold harmless Southwest and all other Indemnified Parties for any claims or causes of action related to or arising from any act or omission by CMR or any Subcontractor in connection with employee background screening. This Employee Background Screening provision, and the requirements detailed in **Exhibit J**, shall be a requirement for all Preconstruction and Construction Work performed under this Agreement.

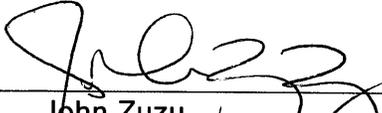
**13.17 Security.** CMR will comply with all requirements provided in Southwest's Security Provisions attached as **Exhibit K**. Should the performance of any Work or services rendered pursuant to this Agreement require access to any Southwest system or Southwest data, CMR will access Southwest systems and use Southwest data in a manner consistent with the then-current Southwest Airlines Information Security Policy which will be provided to CMR upon request. CMR will at all times safeguard such systems and will ensure that its access and any Subcontractor's access to any Southwest system is restricted to authorized personnel only through necessary security measures approved by Southwest. CMR will establish and maintain appropriate internal policies, procedures and systems that are reasonably designed to prevent the inappropriate use or disclosure of any Southwest data or details of any Southwest system. CMR shall use established industry best practices to identify, screen, and prevent the introduction of any Malicious Code into any Work or Instruments of Service.

**13.18** In executing this Agreement, Southwest and CMR each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

[Signature blocks on following page]

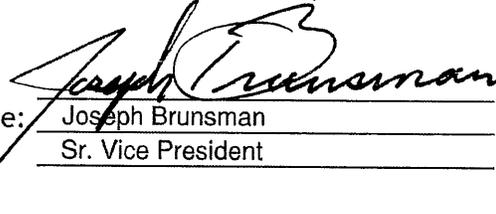
This Agreement is executed on the dates set forth below:

**SOUTHWEST AIRLINES CO.**

By:   
Name: John Zuzu  
Its: Vice President Corporate Facilities

Date August 3, 2022

**MCCARTHY BUILDING COMPANIES, INC.**

By:   
Name: Joseph Brunsman  
Its: Sr. Vice President

Date August 1, 2022

## Exhibit A: CMR's General Conditions Costs Schedule

General Conditions Detailed Calculation **				TOTAL
DESCRIPTION	QUANTITY	UNIT	UNIT LABOR	TOTAL
<b>1. SUPERVISION</b>				
<b>Home Office</b>				
Contract Executive		WKS		\$ -
Baseline Scheduling	1	LS	\$ 10,000.00	\$ 10,000
Scheduling Monthly Updates	38.97	WKS	\$ 709.24	\$ 27,639
Estimating		WKS		\$ -
<b>Project Office</b>				
Sr. Project Manager	23.815	WKS	\$ 5,212.80	\$ 100,898
Project Manager		WKS	\$ 4,601.60	\$ -
Assistant PM		WKS	\$ 3,595.20	\$ -
Superintendent	47.63	WKS	\$ 4,314.00	\$ 178,432
Asst. Superintendent		WKS	\$ 3,595.20	\$ -
Sr. Project Engineer	47.63	WKS	\$ 3,595.20	\$ 171,239
Administrative Assistant	21.65	WKS	\$ 1,891.20	\$ 40,944
BIM Coordinator	8	WKS	\$ 3,595.20	\$ 28,762
Master Mechanic		WKS		\$ -
OSHA/Safety administration	9	WKS	\$ 3,595.20	\$ 32,357
AOA Vehicle Escort		WKS		\$ -
<b>SUBTOTAL</b>				<b>\$ 590,271</b>
<b>2. ENGINEERING</b>				
Engineering Crew (Layout)	160	HRS	\$ 105.00	\$ 16,800
Professional Survey	40	HRS	\$ 200.00	\$ 8,000
Engineering Supplies				\$ -
<b>SUBTOTAL</b>				<b>\$ 24,800</b>
<b>3. JOB OFFICE</b>				
Project Office	10	MO	\$ 1,500.00	\$ 15,000
Site Vehicles (Includes Fuel and Maint.)	16.5	MO	\$ 1,400.00	\$ 19,272
Job Office Toilets, Water, Elec	10	MO	\$ 750.00	\$ 7,500
Postage	10	MO	\$ 250.00	\$ 2,500
Office Equipment	1	LS	\$ 12,500.00	\$ 12,500
Blueprinting/Reproduction	1	LS	\$ 1,500.00	\$ 1,500
Internet Service	10	MO	\$ 1,200.00	\$ 12,000
Trailer Alarm System and Monitor	10	MO	\$ 150.00	\$ 1,500
Misc. Job Office		MO		\$ -
<b>SUBTOTAL</b>				<b>\$ 71,772</b>
<b>4. STORAGE</b>				
Storage Trailers	10	MO	\$ 225.00	\$ 2,250
<b>SUBTOTAL</b>				<b>\$ 2,250</b>
<b>5. TEMPORARY FACILITIES</b>				
Temporary Facilities (Temp Toilets)	10	MO	\$ 250.00	\$ 2,500
<b>SUBTOTAL</b>				<b>\$ 2,500</b>

6. TEMPORARY UTILITIES				
Building heat		MOS		By SWA
Water service- install		LS		Cost of Work
Water service- use		MOS		By SWA
Temporary power- install		LS		Cost of Work
Temporary power- use		MOS		By SWA
Permanent power start-up		MOS		\$ -
Telephone	10	MOS	\$ 300.00	\$ 3,000
<b>SUBTOTAL</b>				<b>\$ 3,000</b>
7. CLEANUP				
Clean-up - Site	30.31	WKS	\$ 1,200.00	\$ 36,372
Clean-up - Bldg	34.64	WKS	\$ 1,200.00	\$ 41,568
Final Cleaning	28640	SF	\$ 0.50	\$ 14,320
Dump Fees	40.00	EA	\$ 500.00	\$ 20,000
<b>SUBTOTAL</b>				<b>\$ 112,260</b>
8. EQUIPMENT				
Computer/Software	32.5	MO	\$ 1,203.75	\$ 36,050
Office Supplies/Reproductions	10	MO	\$ 550.00	\$ 5,500
Licenses		MO		\$ -
Telephones/Cell Phones	32.5	MO	\$ 125.00	\$ 3,743
<b>SUBTOTAL</b>				<b>\$ 45,293</b>
9. TRAVEL EXPENSE				
Personnel/home office				
Airfare (if from non-SW city)		MO		\$ -
Hotel		MO		\$ -
Rental car		MO		\$ -
Per Diem		MO		\$ -
Project-related travel		EA		\$ -
<b>SUBTOTAL</b>				<b>\$ -</b>
<b>TOTAL</b>				<b>\$ 852,145</b>

**\*\*Notwithstanding the breakdown or categorization of any costs to be reimbursed as a Cost of the Work under the Contract Documents, there shall be no duplication of costs in the event any particular item for which payment is requested can be characterized as falling into two or more categories or in CMR's General Conditions Costs and in other Costs of the Work. Southwest shall only be required to pay once.**

**ESTIMATED LABOR RATES & BURDENS:**

5. Provide estimated labor rates and labor burdens for any construction work that General Contractor may perform as cost of the work.

	Labor Description	Est. Labor Cost	Labor Burdens	Total Est. Cost
5.1	Carpenter Foreman	42.15	17.70	59.85
5.2	Carpenter	37.71	15.84	53.55
5.3	Labor Foreman	34.01	14.29	48.30
5.4	Laborer	27.36	11.49	38.85
5.5	Mechanical and Plumbing (TBD)			
5.6				
5.7				
5.8				
5.9				

## Exhibit B: CMR's Preconstruction Schedule of Values

Pre-Construction Detailed Calculation				TOTAL
DESCRIPTION	QUANTITY	UNIT	UNIT LABOR	TOTAL
<b>1. SUPERVISION</b>				
<b>Home Office</b>				
Contract Executive		WKS		\$ -
Scheduling		WKS		\$ -
Estimating		WKS		\$ -
Design Integration	2	WKS	\$ 4,600.00	\$ 9,200
Precon Director		WKS	\$ 5,720.00	\$ -
MEP Director	1	WKS	\$ 5,720.00	\$ 5,720
Precon Manager	14	WKS	\$ 4,600.00	\$ 64,400
Electrical Estimator		WKS	\$ 4,600.00	\$ -
Estimator	6	WKS	\$ 2,880.00	\$ 17,280
VDC Manager	1	WKS	\$ 4,200.00	\$ 4,200
<b>Project Office</b>				
Project Manager	2	WKS	\$ 4,800.00	\$ 9,600
Superintendent	2	WKS	\$ 4,800.00	\$ 9,600
Project Engineer		WKS		\$ -
Administrative Assistant		WKS		\$ -
Master Mechanic		WKS		\$ -
OSHA/Safety administration		WKS		\$ -
AOA Vehicle Escort		WKS		\$ -
<b>SUBTOTAL</b>				<b>\$ 120,000</b>
<b>2. ENGINEERING</b>				
Engineering Crew		HRS		\$ -
Engineering Supplies				\$ -
<b>SUBTOTAL</b>				<b>\$ -</b>
<b>3. JOB OFFICE</b>				
Project Office		MO		\$ -
Misc. Job Office		MO		\$ -
<b>SUBTOTAL</b>				<b>\$ -</b>
<b>4. STORAGE</b>				
Storage Trailers		MO		\$ -
<b>SUBTOTAL</b>				<b>\$ -</b>
<b>5. TEMPORARY FACILITIES</b>				
Temporary Facilities		MO		\$ -
<b>SUBTOTAL</b>				<b>\$ -</b>
<b>6. TEMPORARY UTILITIES</b>				
Building heat		MOS		By SWA
Water service- install		LS		\$ -
Water service- use		MOS		By SWA
Temporary power- install		LS		\$ -

Temporary power- use		MOS		By SWA	
Permanent power start-up		MOS		\$	-
Telephone		MOS		\$	-
<b>SUBTOTAL</b>				<b>\$</b>	<b>-</b>
<b>7. CLEANUP</b>					
Clean-up		WKS		\$	-
<b>SUBTOTAL</b>				<b>\$</b>	<b>-</b>
<b>8. EQUIPMENT</b>					
Equipment		MO		\$	-
<b>SUBTOTAL</b>				<b>\$</b>	<b>-</b>
<b>9. TRAVEL EXPENSE</b>					
Personnel/home office					
Airfare (if from non-SW city)		MO		\$	-
Hotel		MO		\$	-
Rental car		MO		\$	-
Per Diem		MO		\$	-
Project-related travel		EA		\$	-
<b>SUBTOTAL</b>				<b>\$</b>	<b>-</b>
<b>TOTAL</b>				<b>\$</b>	<b>120,000</b>



Exhibit C-2: Unconditional Waiver and Release on Progress Payment

**NOTICE**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

**Project** \_\_\_\_\_

**Job No.** \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: \_\_\_\_\_

(Company Name)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_, who further acknowledged to me that he/she is the person executing this UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT and that he/she is fully authorized to do so on behalf of \_\_\_\_\_, a \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_  
My Commission Expires:

Exhibit C-3: Conditional Waiver and Release on Final Payment

Project \_\_\_\_\_

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent:

\_\_\_\_\_ (description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_, who further acknowledged to me that he/she is the person executing this CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT and that he/she is fully authorized to do so on behalf of \_\_\_\_\_, a \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Exhibit C-4: Unconditional Waiver and Release on Final Payment

**NOTICE**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below (if you have not been paid, use a conditional release form).**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

**Project** \_\_\_\_\_

**Job No.** \_\_\_\_\_

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_, who further acknowledged to me that he/she is the person executing this UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT and that he/she is fully authorized to do so on behalf of \_\_\_\_\_, a \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Exhibit D: Southwest Audit Provisions

- .1 Whenever Southwest enters into any type of contractual arrangement (including but not limited to unit price, cost plus or time & material contracts with or without a guaranteed maximum or not-to-exceed amount), CMR's, Subcontractors' and sub-subcontractors' "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by a Southwest representative or an outside representative engaged by Southwest. Southwest or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of seven (7) years after final payment or longer if required by law. Southwest's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with CMR's employees, field and agency labor, subcontractors, and vendors.
- .2 CMR's "Records" as referred to in this Agreement shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, Plans and Specifications, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Southwest's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract Documents. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; files relating to Additional Services Change Notices/Orders (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger; records detailing cash and trade discounts earned, insurance rebates and dividends; and any other CMR records which may have a bearing on matters of interest to Southwest in connection with the CMR's dealings with Southwest (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following: (a) compliance with requirements for deliverables as established in this Agreement and the Contract Documents; (b) compliance with approved Plans and Specifications; (c) compliance with provisions regarding the pricing of Additional Services Change Notices/Orders as stated in this Agreement; (d) accuracy of CMR's representations contained in Applications for Payment; and (e) accuracy of CMR representations related to claims submitted by the CMR or any of his payees.
- .3 CMR shall require all payees (examples of payees include subcontractors and material suppliers) to comply with the provisions of this Exhibit D by including the requirements hereof in a written contract agreement between CMR and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to subcontractors and sub-subcontractors, material suppliers, etc. CMR will cooperate fully and will cause all related parties and all of CMR's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Southwest from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.
- .4 Southwest's authorized representative or designee shall have reasonable access to the CMR's facilities, shall be allowed to interview all current employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Exhibit D.
- .5 If an audit, inspection or examination in accordance with this Exhibit D discloses overpricing or overcharges (of any nature) by the CMR to Southwest, in addition to making adjustments for the overcharges, the reasonable actual cost of Southwest's audit shall be reimbursed to Southwest by the CMR. Any adjustments and/or payments which must be made as a result of any such audit or

inspection of the CMR's invoices and/or records shall be made within ninety (90) days from presentation of Southwest's findings to CMR.

**Exhibit E: Payment and Performance Bond Templates**

**Bonds must be in compliance and in a format approved by Southwest and the Airport Authority**

Exhibit F: Final Guaranteed Maximum Price Change Order

To be attached after approval pursuant to Section 5.5 of the CMR Agreement

Exhibit F-1: List of Drawings/Specifications

Exhibit F-2: Alternates, Allowances, Unit Prices

## Exhibit F-3: Clarifications and Assumptions

Exhibit F-4: FGMP Statement and Supporting Documentation

Exhibit F-5: Construction Schedule of Values

Exhibit F-6 CMR's Project Construction Schedule

Exhibit F-7: CMR's Key Personnel

Exhibit G: Application for Payment Template

See Attached

## APPLICATION FOR PAYMENT

<b>Bill To:</b> Southwest Airlines Co ATTN: Corporate Facilities 2702 Love Field Drive Dallas, TX. 75235	<b>Invoice Date:</b> _____ <b>Invoice Number:</b> _____  <b>Application Number:</b> _____ <b>Manager:</b> _____ <b>Location:</b> _____ <b>Project Name:</b> _____ <b>Project ID:</b> _____ <b>Period To:</b> _____ <b>Contract Date:</b> _____
<b>Remit To:</b>        	

Application is made for payment, as shown below, in connection with the Contract. Schedule of Values is attached.

<b>1</b>	ORIGINAL CONTRACT SUM	\$0.00
<b>2</b>	NET CHANGE BY CHANGE ORDERS	\$0.00
<b>3</b>	CONTRACT SUM TO DATE (Line 1 and 2)	\$0.00
<b>4</b>	TOTAL COMPLETED & STORED TO DATE	\$0.00
<b>5</b>	10% RETAINAGE	\$0.00
<b>6</b>	TOTAL EARNED LESS RETAINAGE	\$0.00
<b>7</b>	LESS PREVIOUS CERTIFICATES FOR PAYMENT <i>(Line 4 from prior Certificate)</i>	\$0.00
<b>8</b>	REIMBURSABLES (if applicable)	\$0.00
<b>9</b>	<i>CURRENT AMOUNT DUE - LESS SALES TAX</i>	\$0.00
<b>10</b>	<i>CURRENT SALES TAX AMOUNT DUE (if applicable)</i>	\$0.00
<b>11</b>	<i>CURRENT AMOUNT DUE INCLUDING SALES TAX</i>	\$0.00
<b>12</b>	BALANCE TO COMPLETE, PLUS RETAINAGE	\$0.00

ALL PRICES INCLUDE APPLICABLE SALES, USE AND EXCISE TAXES



## Exhibit I: Invoicing Requirements

Please be sure to include the following information when submitting an invoice:

- The title should read as an Invoice, and cannot be processed as a Quote or a Statement
- Remit To Address, including the Vendor Name (Vendor Address)
- Bill To: Southwest Airlines Co ATTN: Corporate Facilities 2702 Love Field Dr. Dallas, TX 75235
- Project Name (if applicable)
- Project Number (if applicable)
- Project Manager's Name (if available)
- City location of the project, or where the work was completed
- Invoice Number (Unique Identifier)
  - Cannot be a single digit number
  - Any format is acceptable, but a possible example could be: The project number combined with the application number - Invoice #: FA00586-04
- Invoice Date
- Invoice Amount (Total amount to be paid must be explicitly stated)
- Facilities Maintenance Work Order Number(s) / FM-123456
- Please list current Sales Tax Amount Due (if applicable)
- The PDF file name should include the Vendor Name and Invoice Number

**\*If the invoice is sent to any other email address other than [CorpFacilities.Invoices@wnco.com](mailto:CorpFacilities.Invoices@wnco.com) or is missing any of the above requested information, then the invoice will be rejected and payment could be delayed as a result.**

If you have any questions or concerns, please contact your Southwest Airlines representative.

## Exhibit J: Background Check Screening Requirements

CMR employees and Subcontractors who (a) receive a security badge (SIDA or Non-SIDA), (b) receive a Southwest contractor ID (xID) and/or (c) will access Southwest systems (each, a “CMR Resource”) must pass a criminal background check at CMR’s expense in accordance with the following provisions. A “Southwest Site” is any Southwest property or operating location where CMR employees will be required to badge in through Southwest security. “Southwest’s Systems” include without limitation Southwest’s computer network, servers, and systems, or assignment of an xID by Southwest to a CMR employee for access to such network, servers or systems.

1. Background checks will be performed in compliance with Fair Credit Reporting Act regulations and Equal Employment Opportunity Commission regulations and guidance on background checks. Background checks will be performed by a National Association of Professional Background Screeners (NAPBS)-accredited background vendor of CMR’s choosing. Background checks must be completed no more than ninety (90) days before a CMR Resource begins performing any services for Southwest. Southwest reserves the right to deny access to its facilities, property or Southwest’s systems to CMR employees that do not pass the aforementioned background check.

2. **SIDA.** Secure Identification Display Area (“SIDA”) access CMR Resources shall obtain a SIDA badge per TSA requirements. This will serve as the criminal background check.

3. **Non-SIDA Security Badge and Login ID.** Non-SIDA access CMR Resources shall meet the background screening requirements listed in (“Exhibit P-1 - Background Check Matrix”) as determined by the following background checks:

A. United States of America background check, including Social Security number trace (includes address search), felony and misdemeanor county criminal check, and federal criminal check. The following criminal courts must be searched for each county in which each individual Company Resource has worked or resided for the last seven (7) years: (A) United States of America federal and state courts, including all district courts, departments of corrections (inmates and release files, probation and parole), administrative office of courts, individual counties, municipal courts, state specific criminal record repositories, Company proprietary criminal record data, and sex offender registry records, in each case for all fifty (50) states plus Washington D.C. (where addresses and areas of residence will be established by information provided by each individual’s job application and by background check address search); and (B) superior courts (felonies) and municipal courts (misdemeanors) for all counties where each individual Company Resource worked and resided.

B. International background check, including felony and misdemeanor county criminal check (or national equivalency) and federal criminal (or national equivalency).

4. **Non-SIDA Results Verification.** The results of the above background checks shall be compared to the matrix requirements in Exhibit P-1 for all Non-SIDA access CMR Resources. The CMR Resource has not “passed” if he or she has a conviction for any of the crimes listed, by position, in Exhibit P-1 during the time frame applicable to the position in which the CMR Resource will be working.

5. **Frequency.** To the extent a CMR Resource has not provided services to Southwest for at least six months, CMR and each Subcontractor shall repeat the criminal background check prior to the CMR or Subcontractor Resource being allowed entry to Southwest premises or access to Southwest's facilities, property or Southwest Systems.

6. **Southwest Vendor Management System.** In addition, CMR will be required to create and maintain records for its assigned personnel in Southwest's vendor management system. Southwest will provide reasonable assistance in training and obtaining CMR's access to such management system.

7. **Audit Rights.** In assigning a CMR or Subcontractor Resource, CMR attests that it has performed a satisfactory background check on the CMR Resource and that the CMR Resource has passed according to the criteria above. No additional attestation will be required of a CMR Resource; provided, however, Southwest shall have the right to audit CMR's background screening program. CMR shall, upon Southwest's request, permit an authorized Southwest representative via an online conferencing tool (such as WebEx) to review background screening records, including those of individual CMR Resources, in order to conduct a compliance review, audit or investigation. CMR shall redact all background screening records selected for audit by Southwest to remove any and all personally identifiable information other than the CMR Resource's name prior to sharing them with Southwest via the online conferencing tool. Southwest shall not retain copies of any such background screening records and shall not receive and does not desire to receive any personally identifiable information of a CMR Resource in connection with such audit other than the CMR Resource's name. Such audit rights shall extend to the background check process and records related to any CMR Resource to be assigned to any Southwest Site, regardless of when such background check was conducted prior to the effective date of this Agreement and shall extend to any vendor agreement between CMR and Southwest Airlines. CMR shall ensure this audit requirement is extended to any Subcontractors or consultants it may employ on Southwest premises or in furtherance of Southwest projects. Any discrepancies found during the audit process could result in the immediate revocation of access for any CMR Resource to Southwest's facilities, property or Southwest's Systems. CMR is responsible to maintain readily accessible background check records that would permit a reasonable audit by Southwest for a period of five (5) years.

[End of Background Check Screening Requirements]

Exhibit J-1

Background Check Matrix

See Attached

Disqualifications	Contractor Job Category / Contractor Position																											
	Admin Assistant (Tech Ops)	Admin Resources Coordinator	CS&S Aircraft Maintenance Technician	Center Admin Coordinator (CS&S)	Center Operations Associate	Communications & Outreach	Coordinator People	Crew Base Coordinator	CS&S Coordinator (Inflight)	Customer Department	Customer Relations Department	Facilities Maintenance (CS&S)	Flight Attendant Technician	People Department	Principal Service Engineer (Tech Ops)	Records Department	Recruiter	Regulatory Programs & Compliance Department	Safety & Security Department	Sky Cap Operations	Station Administrator (Ground Operations)	Station Administrator (Inflight)	Supply Chain Management Department	Technical Support Representative (Technology)	Technology Representative	All Other Positions Not Listed		
Aircraft piracy (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			
Aircraft piracy outside the special aircraft jurisdiction of the United States (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Armed or felony unarmed robbery (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Arson (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Assault (5 years – Misdemeanor; 7 years - Felony)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Assault with intent to murder (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Bad checks (5 years)																												
Battery (5 years – Misdemeanor; 7 years - Felony)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Breaking & Entering (7 years)																												
Bribery (7 years)																												
Burglary (7 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Carrying a weapon or explosive aboard aircraft (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Commission of certain crimes aboard aircraft in flight (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Computer-related crimes (5 years)																												
Computer-related crimes (7 years)																												
Conveying false information and threats regarding aircraft (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Counterfeiting (7 years)																												
Credit Card Fraud (5 years)																												
Crimes of Dishonesty (7 years)																												
Crimes of Dishonesty (10 years)																												
Crimes of Dishonesty (e.g., falsification of documents ) (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Crimes of Terror (15 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Counterfeiting (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Destruction of an aircraft or aircraft facility (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Distribution of, or intent to distribute, a controlled substance (10 yrs)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Domestic/Family Violence (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Drug Related Crimes (7 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
DUI/DWI (2 within 3 years)																												
Embezzlement (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Embezzlement (7 years)																												
Espionage (15 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Extortion (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving a threat (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving aggravated assault (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving arson (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving bribery (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving burglary (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Felony involving dishonesty, fraud, or misrepresentation (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		

Disqualifications	Contractor Job Category / Contractor Position																											
	Admin Assistant (Tech Ops)	Admin Resources Coordinator	(CS&S) Aircraft Maintenance Technician	Center Admin Coordinator	Center Operations (CS&S)	(CS&S) Center Support Leader Associate	Communications & Outreach Coordinator People	Crew Base Coordinator	CS&S Coordinator	Customer Department (Inflight)	Customer Relations Department	Facilities Maintenance Department	Flight Attendant Technician	People Department	Principal Service Supervisor	Operations Records Specialist	Engineer (Tech Ops)	Recruiter	Regulatory Programs & Compliance Department	Safety & Security Department	Sky Cap	Station Administrator (Ground Operations)	Station Administrator (Ground Operations)	Station Administrator (Supply Chain Management)	Technical Support Representative (Technology)	Technology Representative	All Other Positions Not Listed	
Felony involving illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Felony involving possession or distribution of stolen property (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Felony involving theft (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Felony involving willful destruction of property (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Forgery of certificates (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Forgery of false marking of aircraft (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Forgery of other aircraft registration violation (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Fraud (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Fraud (7 years)		x																										
Fraud (10 years)																												
Fraud/Credit Card Fraud (7 years)	x																											
Hacking (7 years)																												
Harassment/Stalking (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Harassment/Stalking (7 years)																												
Identity theft (7 years)																												
Improper transportation of a hazardous material (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Indecent Exposure (5 years)																												
Interference with air navigation (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Interference with flight crew members or flight attendants (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Involuntary Manslaughter (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Kidnapping (20 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Kidnapping or hostage taking (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Lighting violations involving transporting controlled substances (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Murder (25 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Phishing (7 years)																												
Rape (15 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Rape or aggravated sexual abuse (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Reckless Endangerment (3 years)																												
Reckless Endangerment (5 years)																												
Reckless Endangerment (7 years)																												
Sedition (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Sexual Assault (10 years)																												
Sexual Assault of a Child (15 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Slander/Label (3 years)																												
Smuggling (5 years)																												
Smuggling (7 years)																												
Theft (5 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Theft (7 years)	x																											
Treason (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Unlawful entry into an aircraft (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	

Disqualifications	Contractor Job Category / Contractor Position																												
	Admin Assistant (Tech Ops)	Admin Resources Coordinator	CS&S Aircraft Maintenance Technician	Center Admin Coordinator	Center Operations Technician (CS&S)	Center Support Associate	Communications & Outreach Coordinator	Crew Base Coordinator	Crew Base Coordinator	CS&S Department	Customer Relations Department	Customer Representative	Facilities Maintenance Department	Flight Attendant Technician	People Department	Principal Service Supervisor	Ops Records Specialist (Tech Ops)	Recruiter	Regulatory Programs & Compliance Department	Safety & Security Department	Sky Cap	Station Administrator (Ground Operations)	Station Administrator (Ground Operations)	Inventory Management Department	Supply Chain Management (Technology)	Technical Support Representative	Technology Department	All Other Positions Not Listed	
Unlawful entry of airport area that serves air carriers (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Unlawful entry of foreign air carriers contrary to established security requirements (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Violence at international airports (10 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Voluntary Manslaughter (15 years)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		

Background Check Matrix

CONFIDENTIAL

## Exhibit K: Southwest Security Provisions

### 1. Generally Applicable Security Provisions.

#### 1.1. Security Best Practices.

1.1.1. CMR shall maintain, implement, and comply with appropriate physical, technical, administrative, operational, and organizational measures to protect Southwest Confidential Information (including Southwest Data) Handled by it (or on its behalf) against accidental, unauthorized, or unlawful destruction, loss, use, alteration, disclosure, or access, including when such Handling is undertaken in connection with any Product or Service. (“*Handled*” means processed, collected, recorded, organized, stored, accessed, adapted, altered, analyzed, retrieved, used, disclosed, transmitted, disseminated, aggregated, made available, aligned, combined, deleted, erased, destroyed, generated, or produced.) Without limiting the foregoing, CMR represents, warrants, and covenants that, in performance of its obligations under the Agreement, it will comply with the highest of: (a) any law, rule, order, or regulation applicable to the Agreement or any Order, the Products or Services, Southwest, or CMR, (b) all security requirements, obligations, specifications, and event reporting procedures required elsewhere under the Agreement, and (c) at Southwest’s cost and expense and within a mutually agreed timeframe, any new security requirement, obligation, specification, or event reporting procedure required by Southwest (collectively referred to as “*Security Best Practices*”).

1.1.2. Notwithstanding anything in Section 1.1.1,

- (a) If CMR Handles Cardholder Data in connection with the provision of Products or Services or in connection with the Agreement or any Order, or if the Products or Services are used to Handle Cardholder Data or potentially affect or impact the security of any Sensitive System of Southwest used to Handle Cardholder Data, then Security Best Practices also includes applicable industry standards and rules concerning privacy, data protection, confidentiality, information security, availability and integrity, including those imposed by industry groups such as the PCI Security Standards Council;
- (b) If CMR provides any Products or Services under the Agreement or any Order, then Security Best Practices also includes security and privacy controls that are no less rigorous than those set out in the then-current NIST Special Publication 800-53; and,
- (c) If CMR provides any Software or other software under the Agreement or any Order, or if CMR uses any software to provide the Product or Services, in either case which software is developed by CMR, then Security Best Practices also includes secure software development practices that are consistent with the then-current Building Security In Maturity Model (BSIMM) Framework.

1.1.3. Failure by CMR to comply with Security Best Practices shall be a material breach of the Agreement.

1.2. Southwest System Access. To the extent that CMR Parties are provided credentials to access Southwest systems, CMR will (and will cause CMR Parties to) access Southwest systems and use Southwest Confidential Information (including Southwest Data) in compliance with the then-current Southwest Airlines Information Security Policy. Southwest will provide a copy of the then-current Southwest Airlines Information Security Policy to CMR upon request.

1.3. SOC 2 Type II Audits and Reports. Upon request, CMR will provide Southwest with a copy of a current SOC 2 Type II Audit Report (“*SOC 2 Audit Report*”) that captures all security and privacy controls that are relevant to the security, availability, or integrity of the systems used to Handle Southwest Confidential Information (including Southwest Data) and that are in use at each facility where the Services are provided under the Agreement or any Order. CMR shall provide Southwest with a complete SOC 2 Audit Report and shall take all necessary steps at CMR’s sole expense to remediate any issue or finding identified during the audit to ensure that the auditor’s opinion expressed in the SOC 2 Audit Report provided ultimately is unqualified. Neither the provision by CMR of the SOC 2 Audit Report in accordance with this Section 1.3 (SOC 2 Type II Audits and Reports), nor anything else in this Section 1.3 (SOC 2 Type II Audits and Reports), will limit Southwest’s audit rights under the Agreement.

- 1.4. Southwest Audit of CMR Systems. Upon at least thirty (30) days' prior written notice to CMR, Southwest shall have the right to perform (and to have its designated representative(s) perform) an audit and inspection of the security and privacy controls in place at CMR's facilities and operations used by CMR to provide the Services under the Agreement or any Order to verify CMR's compliance with this Attachment 4 (Southwest Security Provisions). For clarity, any such inspection or audit shall be at Southwest's sole cost and expense, except as otherwise provided in Exhibit I. Such an audit may consist of assessing all aspects of the Products and Services provided under the Agreement, and may include: (a) network, operating system, database, and application configuration controls, (b) general controls and security practices and procedures, (c) network and system vulnerability and risk analyses, (d) change and problem management processes and procedures, (e) secure software development practices and procedures, and (f) disaster recovery and back-up procedures. CMR will allow reasonable access, during normal business hours and upon reasonable notice, to all CMR facilities where Southwest Confidential Information (including Southwest Data) is stored or maintained, any computerized systems used to Handle Southwest Confidential Information (including Southwest Data), and pertinent records, documentation, data, and Personnel as Southwest deems necessary to accurately and effectively complete the audit engagement, excluding, however, direct logical access to computerized systems. CMR shall not provide access to confidential information belonging to other customers of CMR. Southwest will take all reasonable steps to ensure that its audit will not materially adversely impact CMR's business or operations. Nothing in this Section 1.4 (Southwest Audit of CMR Systems) shall limit anything in Exhibit I.
- 1.5. Security Breaches.
  - 1.5.1. CMR shall notify Southwest within 24 hours in the event of any breach or suspected breach of the security of any network, computing systems, or facilities providing access to Southwest Confidential Information (including Southwest Data) under the Agreement. In the event of any breach of Southwest Confidential Information (including Southwest Data), CMR will immediately notify Southwest in writing. For all breaches, CMR will conduct an audit to determine the cause of such breach and provide Southwest with a detailed report indicating the cause of the breach and the plan to address the issue.
  - 1.5.2. If CMR Handles Cardholder Data in connection with the provision of Products or Services or in connection with the Agreement or any Order, or if the Products or Services are used to Handle Cardholder Data or potentially affect or impact the security of any Sensitive System of Southwest used to Handle Cardholder Data, then, if a breach or suspected breach involves cardholder data, CMR shall provide to each Payment Card Industry representative, and each Payment Card Industry approved third party, full cooperation and access to conduct a thorough security review. The review will assess compliance with Payment Card Industry Data Security Standards for protecting Cardholder Data.
- 1.6. System Free of Malicious Code. CMR shall (a) not introduce or code any Malicious Code into, and (b) use established industry best practices (including maintaining and implementing current versions of industry-standard commercially available anti-virus software) to (i) identify, screen, and prevent the introduction of any Malicious Code into, and (ii) remove all Malicious Code from, any Product, Service, or Work Product and any software used by CMR in connection with the Agreement or any Order (including to provide any Services), where "**Malicious Code**" means any software, code, routine, device, or other element that does or is designed to disable, damage, impair, erase, interfere with, deactivate, allow unauthorized access to, deny access to, extricate, expropriate, intercept, or repossess any Southwest system, hardware, software, information, or data or to permit such to be done, including any Trojan horse, trap door, back door, virus, ransomware, worm, time bomb, or cancelbot. CMR shall immediately advise Southwest, in writing, upon reasonable suspicion or actual knowledge that any Product, Service, or Work Product or any software used by CMR in connection with the Agreement or any Order may contain Malicious Code. CMR shall use commercially reasonable efforts, at no additional charge to Southwest, to assist Southwest in reducing the effects of any identified Malicious Code connected with any Product, Service, or Work Product or any software used by CMR in connection with the Agreement or any Order and, if such Malicious Code causes

a loss of operational efficiency or loss of Confidential Information to assist Southwest to the same extent to mitigate and restore such losses.

- 1.7. Infrastructure Penetration Testing. If CMR is performing any of the Services under the Agreement or any Order from any location other than Southwest managed environments, then:
  - 1.7.1. At least once per year during the Term, CMR shall have external infrastructure penetration testing performed at each facility where CMR performs the Services under the Agreement or any Order. CMR shall have the penetration tests performed by independent third party penetration testers certified by the SANS Institute or by a mutually acceptable independent third party testing company.
  - 1.7.2. CMR shall ensure that the infrastructure penetration testing is performed in accordance with the OSSTMM (Open Source Security Testing Methodology Manual), NIST (National Institute of Standards and Technology) SP 800.115, or equivalent.
  - 1.7.3. At CMR's sole cost and expense, CMR shall promptly remediate and have retested (for verification) in accordance with this Section 1.7 (Infrastructure Penetration Testing) any "very high", "high", or "medium" severity vulnerabilities and any vulnerabilities with CVSS (Common Vulnerability Scoring System) ratings higher than 4.0. Upon request, CMR will provide penetration test reports including the test results and remediation plans.
- 1.8. Application Penetration Testing by CMR. If CMR or any CMR ~~Personnel~~ Parties provides any Software or other software under the Agreement or any Order, or if CMR uses any software to provide the Product or Services, in either case which software is developed or modified by CMR, then:
  - 1.8.1. For any Software or other software under the Agreement or any Order, or any software used by CMR to provide the Product or Services, at least once per year during the Term and, without limiting the foregoing, upon each Software Upgrade, CMR shall have application penetration testing performed. CMR shall ensure that all application penetration testing includes mobile and hosted components of the Software, as well as both automated analysis and manual assessment. CMR shall have the application penetration tests performed by independent third party SANS-certified penetration testers or by a mutually acceptable independent third party testing company.
  - 1.8.2. CMR will penetration test all web applications composing the Software or other software provided by CMR, at minimum, against the then-current OWASP Top 10. CMR will penetration test all non-web applications composing the Software or other software provided by CMR, at minimum, against the then-current CWE/SANS Top 25 Most Dangerous Software Errors. CMR will manually assess (code review and penetration test) all mobile components of Software or other software provided by CMR, at a minimum, against the then-current OWASP Mobile Top Ten Risks and the OWASP Mobile Top Ten Controls.
  - 1.8.3. At CMR's sole cost and expense, CMR shall promptly remediate and have retested (for verification) in accordance with this Section 1.8 (Application Penetration Testing by CMR) any "very high", "high", or "medium" severity vulnerabilities and any vulnerabilities with CVSS (Common Vulnerability Scoring System) ratings higher than 4.0. Upon request, CMR will provide penetration test reports including the test results and remediation plans.
- 1.9. Mobile-Specific Provisions. For any mobile application composing Software or any Technology or CMR Platform, CMR shall not obtain or use, without Southwest's prior written consent in each case, the mobile device user's: (a) location data, (b) contact list, (c) carrier information, (d) SIM card data, or (e) device information.
- 1.10. Security Rating. If Southwest (at Southwest's sole cost and expense) obtains a CMR security rating from a continuous security ratings services provider (such as BitSight) that (a) is below the medium security rating set by Southwest or (b) drops more than 10% from CMR's prior security rating, Southwest may enable CMR access to the provider and ask CMR to work with the provider to improve CMR's security

rating. Upon such request, CMR shall use commercially reasonable efforts, at no additional charge, to work with the provider to improve CMR's security and raise CMR's security rating to (i) meet the medium security rating set by Southwest or (ii) meet the CMR's prior security rating, whichever is higher.

- 1.11. PCI Standard Commitment. If CMR provides any Software under the Agreement or any Order, but (a) CMR does not Handle Cardholder Data in connection with the provision of Products or Services or in connection with the Agreement or any Order, and (b) no Products or Services are used to Handle Cardholder Data or potentially affect or impact the security of any Sensitive System of Southwest used to Handle Cardholder Data, then, to the extent that Southwest's use of the Software as permitted in the Agreement causes Southwest to fail a PCI assessment, CMR will use commercially reasonable efforts to replace or repair the Software to remedy the issue, or if such repair or replacement is not reasonably possible, Southwest may terminate the Agreement or the applicable Order and, in such event, CMR will promptly refund to Southwest the following amount: (i) with respect to Software not expressly licensed or provided under the Agreement for a perpetual duration, (A) the unused prepaid fees paid by Southwest for such Software, plus (B) provided that Southwest terminates the Support Services applicable to such Software, the unused prepaid fees paid by Southwest for the Support Services applicable to such Software; or, (ii) with respect to Software expressly licensed or provided under the Agreement for a perpetual duration, (A) the undepreciated fees paid by Southwest for such Software, assuming a ten (10) year straight-line depreciation, plus (B) provided that Southwest terminates the Support Services applicable to such Software, the unused prepaid fees paid by Southwest for the Support Services applicable to such Software.
2. Security Provisions Specific to Cardholder Data. If CMR Handles Cardholder Data in connection with the provision of Products or Services or in connection with the Agreement or any Order, or if the Products or Services are used to Handle Cardholder Data or potentially affect or impact the security of any Sensitive System of Southwest used to Handle Cardholder Data, then the following shall apply:
  - 2.1 PCI-DSS, PA-DSS, PTS, and P2PE Responsibilities. CMR shall provide and maintain the equipment, software, services, and testing necessary to protect credit card information (Cardholder Data) in accordance with Section 1.1 (Security Best Practices) of the Agreement. CMR will only use Cardholder Data to perform CMR's obligations under the Agreement and any Order for completing a transaction, supporting a loyalty program, providing fraud control services, or for uses specifically required by law.
  - 2.2 PCI-DSS Compliance. If CMR Handles Cardholder Data on behalf of Southwest, CMR will comply with the requirements of the most current published version of the Payment Card Industry Data Security Standard ("**PCI-DSS**"). PCI-DSS may be available online from the PCI Security Standards Council at <https://www.pcisecuritystandards.org>. Upon request, CMR will provide Southwest an annual PCI Attestation of Compliance from its Qualified Security Assessor confirming compliance with PCI-DSS.
  - 2.3 PA-DSS Compliance. If CMR provides Software or other applications (that is, software) that process, store, or transmit Cardholder Data on behalf of Southwest, CMR will comply with the requirements of the most current published version of the Payment Application Data Security Standard ("**PA-DSS**") for said Software and other applications. The PA-DSS may be available online from the PCI Security Standards Council at <https://www.pcisecuritystandards.org>. CMR will maintain the status of the Software and each other application as a PCI Security Standards Council Validated Payment Application for current versions of each payment Software and other application provided to Southwest.
  - 2.4 PTS / PED Compliance. If CMR provides personal identification number ("**PIN**") transaction devices including PIN pad devices, point of sale devices, hardware security modules, or unattended payment terminals that process, store, or transmit Cardholder Data on behalf of Southwest, CMR will comply with the requirements of the most current published version of the PCI PIN Transaction Security ("**PTS**") standard for said PIN transaction devices. The PTS security requirements and testing and approval programs may be available online from the PCI Security Standards Council at <https://www.pcisecuritystandards.org>. For each version of CMR's PTS devices provided to Southwest, currently in use by Southwest, CMR will maintain the status as a PCI Security Standards Council Approved PIN Transaction Security device.

2.5 P2PE Compliance. If CMR provides a point-to-point encryption (“**P2PE**”) solution that processes, stores, or transmits Cardholder Data on behalf of Southwest, CMR will comply with the requirements of the most current published version of the Payment Card Industry P2PE Standard for said solution. The P2PE requirements may be available online from the PCI Security Standards Council at <https://www.pcisecuritystandards.org>. For each version of CMR’s P2PE solutions provided to Southwest, currently in use by Southwest, CMR will maintain the status as a PCI Security Standards Council Validated P2PE Solution.

3. Secure Code Training of Developers. All developers of systems, Software, and other software being provided to Southwest under the Agreement or any Order, or any software used by CMR to provide the Product or Services, in either case which software is developed or modified by CMR, will have the qualifications (expertise, knowledge and/or training) to develop systems and software that meet secure coding standards, as defined by industry leaders such as the OWASP Top Ten, SANS or NIST. Upon reasonable cause, Southwest may request, and CMR will provide, evidence reasonably satisfactory to Southwest of such qualifications.

4. Additional Provisions.

4.1 Definitions.

4.1.1 “**Cardholder Data**” means (a) with respect to a payment card, the unique payment card number, account holder’s name, account number, expiration date, service code, card validation code/value, personal identification number (or PIN) or personal identification number (or PIN) block, valid to and from dates, and magnetic stripe data, and (b) information relating to a payment card transaction that is identifiable with a specific account.

4.1.2 “**Sensitive System**” means any information system, computing system, application, database, infrastructure, platform, facility, or network of CMR Party or Southwest that is used to Handle Sensitive Information.

4.1.3 “**CMR Parties**” means CMR and its personnel, Subcontractors of any tier, and vendors.

4.1.4 “**Agreement**” means the Agreement to which this Exhibit is attached.

4.2 CMR Parties. Without limitation to any restrictions on subcontracting that may be contained in the Agreement, all references to CMR in this Attachment will include CMR Parties.

[End of Southwest Security Provisions]

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit E**  
**Airline QA/QC Matrix**

## Exhibit E

Testing and Inspection Matrix			
<b>Building Enclosure Testing</b>	McCarthy	3rd Party / Special Inspector	Design
Sills, Subframe/Receptor Systems and Sill Pans per sill dam test in method A of AAMA 502-02	x		
Flashing and End Dams	x		
Penetrations and Interfaces AAMA 501.2-3	x		
Windows/Doors/Skylights/Curtain Walls Integration per AAMA 502-08 or AAMA 503-08	x		
Wall Assemblies Negative Air Chamber Test per AAMA 502-08 Method B	x		
Sealants per ASTM C1193	x		
Roof Drains per ASTM D 5957	x		
Rooftop HVAC Units per AAMA 501.2-3	x		
Building Enclosure infrared testing per ASTM C 1060 and ASNT best practices	x		
<b>Concrete - 033000 &amp; 034713</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Material evaluation and mix design		x	
Steel reinforcement placement		x	
Steel reinforcement welding		x	
Headed bolts and studs		x	
Concrete placement, including conveying and depositing		x	
Curing procedures and maintenance of curing temperature		x	
Concrete tests	x	x	
Verification of concrete strength before erection of tilt-up panels	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Masonry - 042000</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Verification of site-prepared mortar		x	
Verify compliance of grout spaces and of grades, sizes and location of reinforcement		x	
Verify proportions of site-prepared grout		x	
Grout Test (Compressive Strength)		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Steel - All Div 05</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Shop tests and inspections		x	
Shop and Field Welding Inspections		x	
Bolted connections		x	
Cold-formed steel framing		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Metal Panels - 074213.19</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections (Verify with Ghafari)		x	
Water-Spray Test	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>PVC Roofing - 075419</b>	McCarthy	3rd Party / Special Inspector	Design
Final Roof Inspection	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Firestopping - 078400</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Test and Inspections according to ASTM E 2174 and ASTM E 2393		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Joint Sealants - 079200</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Preconstruction Field-Adhesion Testing	x		
Field-Adhesion Testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Overhead/Rapid Coiling Doors - 083323 &amp; 083323.13</b>	McCarthy	3rd Party / Special Inspector	Design
Special Inspections		x	
Testing and Adjusting	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Fiberglass-Sandwich-Panel Assemblies - 084523</b>	McCarthy	3rd Party / Special Inspector	Design

Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Ceramic Tiling - 093013</b>	McCarthy	3rd Party / Special Inspector	Design
Watertight membrane testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Resilient Tile/Static-Control/Resinous Flooring - 096519, 096536, 096723</b>	McCarthy	3rd Party / Special Inspector	Design
Alkalinity and Adhesion Testing	x		
Moisture Testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Tile Carpeting - 096813</b>	McCarthy	3rd Party / Special Inspector	Design
Moisture Testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>High Performance Coatings - 099600</b>	McCarthy	3rd Party / Special Inspector	Design
Dry Film Thickness Testing (Ghafari, required?)		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Loading Dock Equipment - 111319</b>	McCarthy	3rd Party / Special Inspector	Design
Field Testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Walk-In Freezers - 132126.16</b>	McCarthy	3rd Party / Special Inspector	Design
Start-up, functional test, and performance tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Sleeves and Sleeve Seals for Fire-Suppression Piping - 210517</b>	McCarthy	3rd Party / Special Inspector	Design
Leak Test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Vibration and Seismic Controls for Fire-Suppression Piping - 210548</b>	McCarthy	3rd Party / Special Inspector	Design
Load Testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Wet-Pipe Sprinkler Systems - 211313</b>	McCarthy	3rd Party / Special Inspector	Design
Fire-hydrant flow test	x		
Leak Test	x		
Fire-alarm and fire-pump tests, operate as required	x		
Flush, test, and inspect according to NFPA 13	x		
Verify hose threads match local fire department equipment	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Dry-Pipe Sprinkler Systems - 211316</b>	McCarthy	3rd Party / Special Inspector	Design
Fire-hydrant flow test	x		
Leak Test	x		
Fire-alarm and fire-pump tests, operate as required	x		
Flush, test, and inspect according to NFPA 13	x		
Test and adjust controls and safeties	x		
Energize circuits to electrical equipment and devices	x		
Start and run nitrogen generator	x		
Verify hose threads match local fire department equipment	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Preaction Sprinkler Systems - 211319</b>	McCarthy	3rd Party / Special Inspector	Design
Hydrostatic pressure test	x		
Acceptance test	x		
Proportioning system test	x		
Discharge test	x		
Operational test	x		
Controls and safeties testing	x		
Manufacturer's field service	x		
Engage qualified professional engineer (Verify)		x	
Quality Control Checks prior to testing/inspection	x		

Re-testing of rejected materials and installed work	x		
<b>Plumbing Piping Insulation - 220719</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect pipe, fittings, strainers, and valves		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Domestic Water Piping - 221116</b>	McCarthy	3rd Party / Special Inspector	Design
Rough-in and final inspections	x		
Test for leaks and static water testing	x		
Test each pressure vacuum breaker and backflow preventer	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Domestic Water Packaged Booster Pumps - 221123.13</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspection	x		
Leak Test	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Sanitary Waste and Vent Piping - 221316</b>	McCarthy	3rd Party / Special Inspector	Design
Rough-in and final inspections/testing	x		
Leak Test	x		
Static water test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Sanitary Waste Piping Specialties - 221319</b>	McCarthy	3rd Party / Special Inspector	Design
Leak test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Facility Storm Drainage Piping - 221413</b>	McCarthy	3rd Party / Special Inspector	Design
Rough-in and final inspections/testing	x		
Leak Test	x		
Static water test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>General-Service Packaged Air Compressors and Receivers - 221519</b>	McCarthy	3rd Party / Special Inspector	Design
Startup Service	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Electric/Fuel-Fired Domestic-Water Heaters - 223300 &amp; 223400</b>	McCarthy	3rd Party / Special Inspector	Design
Manufacturer's field service	x		
Leak test	x		
Test and adjust controls and safeties	x		
Operational test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Emergency Plumbing Fixtures - 224500</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspection	x		
Leak test	x		
Test and adjust controls and safeties	x		
Operational test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>HVAC TAB - 230593</b>	McCarthy	3rd Party / Special Inspector	Design
Testing, adjusting, and balancing	x		x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Duct Insulation - 230713</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect ductwork		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>HVAC Piping Insulation - 230719</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect pipe, fittings, strainers, and valves		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>LEED Commissioning Requirements - 230800</b>	McCarthy	3rd Party / Special Inspector	Design

Test systems and intersystem performance after test checklists for systems, subsystems and equipment have been approved	x	x	x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Direct Digital Control System for HVAC - 230923</b>	McCarthy	3rd Party / Special Inspector	Design
Operational and functionality testing	x		x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Facility Natural-Gas Piping - 231123</b>	McCarthy	3rd Party / Special Inspector	Design
Test, inspect, and purge natural gas in accordance with IFGC and AHJ	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Hydronic Piping - 232113</b>	McCarthy	3rd Party / Special Inspector	Design
Hydrostatic pressure test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Refrigerant Piping - 232300</b>	McCarthy	3rd Party / Special Inspector	Design
Test refrigerant piping, specialties, and receivers	x		
Test high and low pressure side piping of each system separately	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>HVAC Water Treatment - 232513</b>	McCarthy	3rd Party / Special Inspector	Design
Chemical treatment test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Metal Ducts - 233113</b>	McCarthy	3rd Party / Special Inspector	Design
Leakage test	x		
Duct system cleanliness test	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Air Duct Accessories - 233300</b>	McCarthy	3rd Party / Special Inspector	Design
Operate dampers to verify range of movement	x		
Operate fire, smoke, and combination dampers to verify range of movement	x		
Inspect tuning variances for proper and secure installation	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>HVAC Power Ventilators - 233423</b>	McCarthy	3rd Party / Special Inspector	Design
Tests and Inspections per 3.3B of the specs	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Air Curtains - 233433</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspection	x		
Start up units and leak test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>High-Volume, Low-Speed Fans - 233439</b>	McCarthy	3rd Party / Special Inspector	Design
Fan Operational test	x	x	
Test and adjust controls and safeties	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Air Terminal Units - 233600</b>	McCarthy	3rd Party / Special Inspector	Design
Test for compliance with requirements	x		
Leak test	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Condensing Boilers - 235216</b>	McCarthy	3rd Party / Special Inspector	Design
Perform installation/start-up checks and performance tests	x		
Leak test	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		

<b>Low-Intensity, Gas-Fired, Radiant Heaters 235523.13</b>	McCarthy	3rd Party / Special Inspector	Design
Verify bearing lubrication and proper motor rotation	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Modular Indoor Central-Station Air-Handling Units - 237313</b>	McCarthy	3rd Party / Special Inspector	Design
Leak test	x		
Fan operational test	x		
Charge reffridgerant coils with reffridgerant and test for leaks	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Packaged, Large-Capacity, Rooftop Air-Conditioning Units - 237416.23</b>	McCarthy	3rd Party / Special Inspector	Design
Test units for compliance with requiriements	x	x	
Inspect for and remove shipping bolts, blocks, and tie-down straps	x	x	
Operational test	x	x	
Test and adjust controls and safeties	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Packaged, Direct-Fired, Outdoor, Heating-Only Makeup-Air Units - 237423.13</b>	McCarthy	3rd Party / Special Inspector	Design
Test units for compliance with requiriements	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Computer/Room Air-Conditioners - 238123 &amp; 238126</b>	McCarthy	3rd Party / Special Inspector	Design
Test units for compliance with requiriements	x		
Inspect for and remove shipping bolts, blocks, and tie-down straps	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Fan Coil Units - 238219</b>	McCarthy	3rd Party / Special Inspector	Design
Operate electric heating elements through each stage	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Cabinet Unit Heaters - 238239.13</b>	McCarthy	3rd Party / Special Inspector	Design
Operate electric heating elements through each stage	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Unit Heaters - 238239.16</b>	McCarthy	3rd Party / Special Inspector	Design
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Low-Voltage Electrical Power Conductors and Cables - 260519</b>	McCarthy	3rd Party / Special Inspector	Design
Test service entrance, feeder conductors and conductors	x		
Visual and electrical tests	x		
Initial Infrared Scanning	x		
Follow up infrared scanning	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Grounding and Bonding for Electrical Systems - 260526</b>	McCarthy	3rd Party / Special Inspector	Design
Test for compliance with requirements	x		
Inspect physical and mechanical condition	x		
Test completed grounding system	x		
Measure ground resistance	x		
Perform tests by fall-of-potential method according to IEEE 81	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Underground Ducts and Raceways for electrical Sytems - 260543</b>	McCarthy	3rd Party / Special Inspector	Design
Demonstrate capability and compliance with requirements	x		
Testo for out-of-round duct	x		
Test manhole grounding	x		

Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Electrical Power Monitoring - 260913</b>	McCarthy	3rd Party / Special Inspector	Design
Test and adjust controls and safeties	x		
Visual inspections	x		
Circuitry test	x		
Optical-fiber cable tests	x		
Power monitoring and control system tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Lighting Control Devices - 260923</b>	McCarthy	3rd Party / Special Inspector	Design
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Relay-Based Lighting Controls - 260943.23</b>	McCarthy	3rd Party / Special Inspector	Design
Circuit breaker tests	x		
Surge arrestor tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Low-Voltage Distribution Transformers - 262213</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and Mechanical Inspection	x		
Electrical tests	x		
Infrared scanning	x		
Test labeling	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Switchboards - 262413</b>	McCarthy	3rd Party / Special Inspector	Design
Acceptance testing	x		
Test ground-fault protection	x		
Visual and mechanical inspections and electrical test per NETA	x		
Infrared scanning	x		
test and adjust controls, remote monitoring, and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Panelboards - 262416</b>	McCarthy	3rd Party / Special Inspector	Design
Acceptance testing	x		
Visual and mechanical inspections and electrical test per NETA	x		
Infrared scanning	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Wiring Devices - 262726</b>	McCarthy	3rd Party / Special Inspector	Design
Test and inspections per manufacturers' instructions	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Enclosed Switches and Circuit Breakers - 262816</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspections	x		
Electrical tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Manual and Magnetic Motor Controllers - 262913.03</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspections	x	x	
Electrical tests	x	x	
Infrared inspection	x	x	
System function tests	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Controllers for Fire Pump Drivers - 262933</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect and test each component	x		
Verify and test each electric-drive controller	x		
Operational test	x		
Test and adjust controls and safeties	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Diesel Emergency Engine Generators - 263213.13</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspection	x		

Electrical and mechanical test	x		
NFPA 110 acceptance tests	x		
Battery tests	x		
System integrity tests	x		
Exhaust system back pressure test	x		
Exhaust emissions test	x		
Voltage and frequency transient stability test	x		
Harmonic content tests	x		
Noise level tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Transfer Switches - 263600</b>	McCarthy	3rd Party / Special Inspector	Design
Visual and mechanical inspections	x	x	
Electrical tests	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Lightning Protection for Structures - 264113</b>	McCarthy	3rd Party / Special Inspector	Design
Special inspections as required to obtain a UL Engineering Inspection Report	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>LED Interior Lighting - 265119</b>	McCarthy	3rd Party / Special Inspector	Design
Operational test	x		
Test for Emergency Lighting	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Emergency and Exit Lighting - 265213</b>	McCarthy	3rd Party / Special Inspector	Design
Test for Emergency Lighting	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Lighting Poles and Standards - 265613</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect poles for damage	x	x	
System function test	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>LED Exterior Lighting - 265619</b>	McCarthy	3rd Party / Special Inspector	Design
Operational test	x		
Verify operation of photoelectric controls	x		
Illumination tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Grounding and Bonding for Communication Systems - 270526</b>	McCarthy	3rd Party / Special Inspector	Design
Inspect physical and mechanical condition	x		
Test bonding connection	x		
Test for ground loop currents	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Cable Trays for Communication Systems - 270536</b>	McCarthy	3rd Party / Special Inspector	Design
Survey for compliance with requirements	x		
Visual inspection	x		
Verify number, size, and voltage of cables per NFPA 70	x		
Verify there are no intruding items	x		
Visually inspect joints, grounding connections, and bolted connections	x		
Check bonding jumpers	x		
Check hardware	x		
Visual and mechanical checks for adequacy of cable tray grounding	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Communications Copper Horizontal Cabling - 271513</b>	McCarthy	3rd Party / Special Inspector	Design
Visual inspections	x	x	
Continuity and resistivity tests	x	x	
Test for ground loop currents	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Fire Alarm - 283100</b>	McCarthy	3rd Party / Special Inspector	Design
Visual inspection	x		
System testing	x		

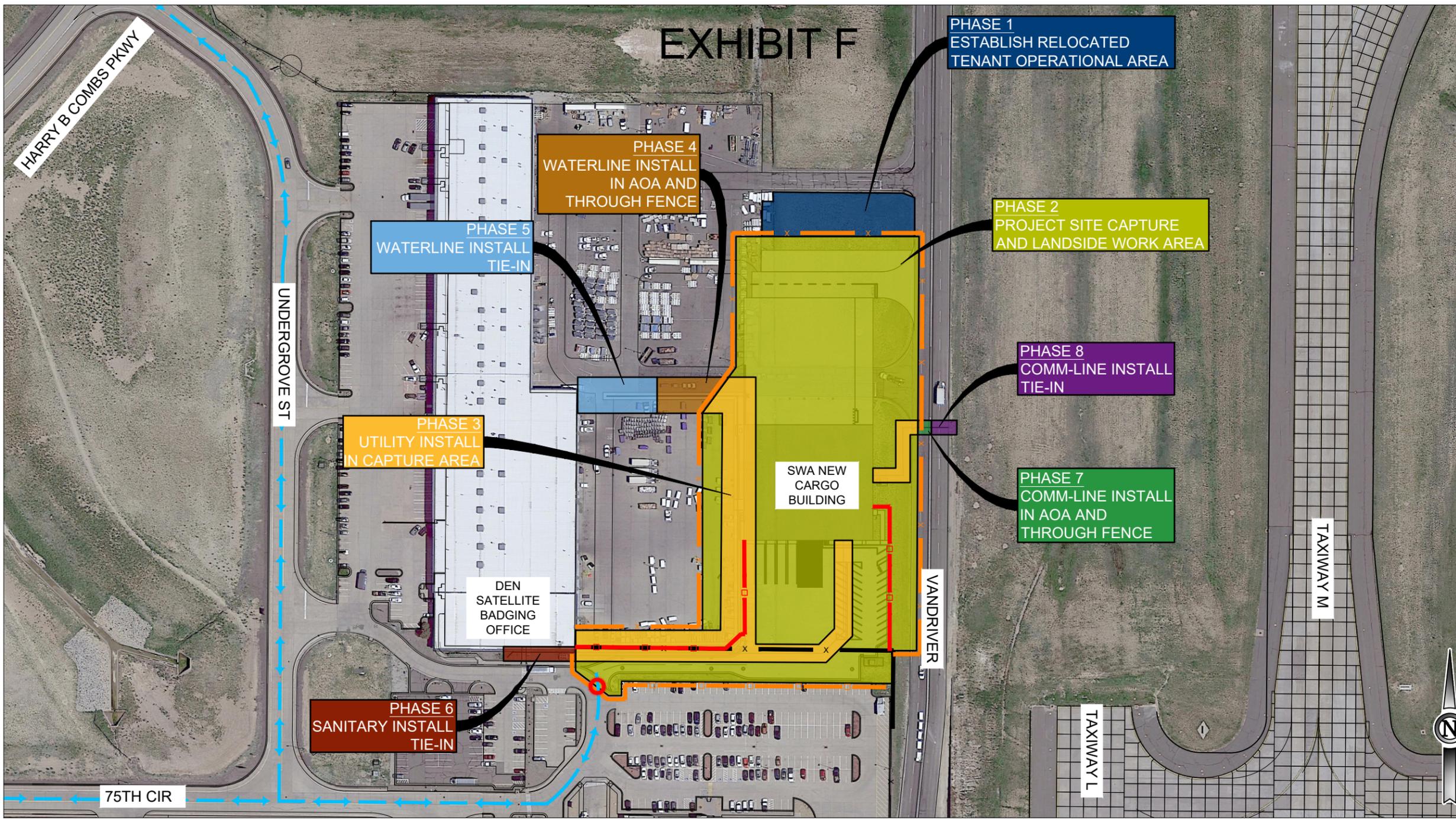
Audible testing	x		
Visual testing	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Earthwork - 312000</b>	McCarthy	3rd Party / Special Inspector	Design
Special inspections		x	x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Aggregate Base Course for Pavement - 312313.13</b>	McCarthy	3rd Party / Special Inspector	Design
Quality control testing during construction	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Excavation, Bedding and Backfill for Utility Systems - 312333.13</b>	McCarthy	3rd Party / Special Inspector	Design
Compaction testing	x	x	
Quality Control Checks prior to testing/inspection			
Re-testing of rejected materials and installed work	x		
<b>Excavation Support and Protection - 315000</b>	McCarthy	3rd Party / Special Inspector	Design
Survey-Work benchmarks	x		x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Drilled Concrete Piers and Shafts - 316329</b>	McCarthy	3rd Party / Special Inspector	Design
Special inspections (drilled piers, excavation, concrete)	x	x	
Soil test	x		x
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Asphalt Paving - 321216</b>	McCarthy	3rd Party / Special Inspector	Design
Thickness	x	x	
Surface smoothness	x	x	
In-place density	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Concrete Paving - 321313</b>	McCarthy	3rd Party / Special Inspector	Design
Slump, air content, temperature, compression specimens, and compressive strength	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>High-Security Chain Link Fences and Gates - 323113.53</b>	McCarthy	3rd Party / Special Inspector	Design
Fabric Testing		x	
Rigidity Testing		x	
Grounding tests		x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Soil Preparation - 329113</b>	McCarthy	3rd Party / Special Inspector	Design
Compaction testing	x	x	
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Sanitary Sewer Systems - 330005</b>	McCarthy	3rd Party / Special Inspector	Design
Clean interior of piping and structures/interior inspection	x		
Leak test	x		
Hydrostatic tests	x		
Air tests	x		
Force Main	x		
Hydraulic tests on manholes	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Water Distribution - 331000</b>	McCarthy	3rd Party / Special Inspector	Design
Piping tests	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Sewerage and Drainage Systems - 333000</b>	McCarthy	3rd Party / Special Inspector	Design
Clean interior of piping and structures/interior inspection	x		
Leak test	x		
Hydrostatic tests	x		
Air tests	x		
Hydraulic tests on manholes	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		

<b>Stormwater Conveyance - 334200</b>	<b>McCarthy</b>	<b>3rd Party / Special Inspector</b>	<b>Design</b>
Clean interior of piping and structures/interior inspection	x		
Leak test	x		
Hydrostatic tests	x		
Air tests	x		
Gravity-flow per AHJ and UNI-B-6	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Subdrainage - 334600</b>	<b>McCarthy</b>	<b>3rd Party / Special Inspector</b>	<b>Design</b>
After installing drainage course to top of piping, test drain piping with water to ensure free flow before backfilling.	x		
Remove obstructions, replace damaged components, and repeat test until results are satisfactory			
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		
<b>Natural Gas Distribution - 335100</b>	<b>McCarthy</b>	<b>3rd Party / Special Inspector</b>	<b>Design</b>
Test, inspect, and purge natural gas in accordance with IFGC and AHJ	x		
Quality Control Checks prior to testing/inspection	x		
Re-testing of rejected materials and installed work	x		

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

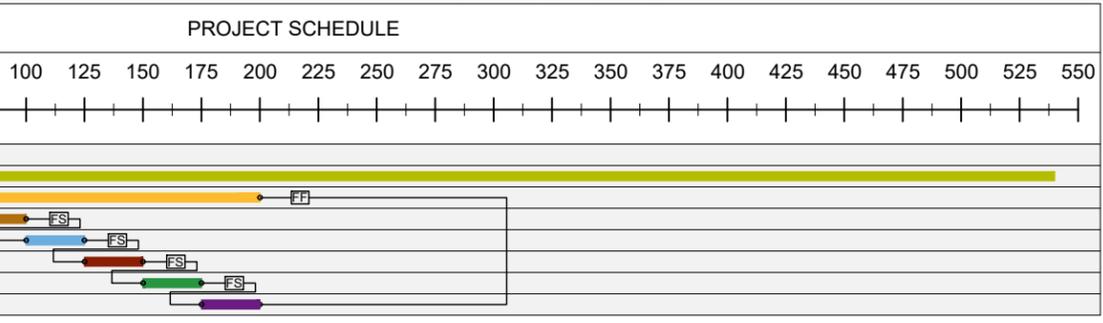
**Exhibit F**  
**Airline Construction Safety and Phasing Plan**

# EXHIBIT F



**PHASING LEGEND**

- LIFE & SAFETY ROUTE
- CARGO OPERATIONAL ROUTE
- PEDESTRIAN ROUTE
- CONTRACTOR HAUL ROUTE (2 WAY TRAFFIC)
- CONTRACTOR HAUL ROUTE (1 WAY TRAFFIC)
- EXISTING AOA FENCE
- TEMPORARY AOA FENCE FOR CONSTRUCTION
- TEMPORARY CONSTRUCTION FENCING
- ULTIMATE AOA FENCE
- FLASHER BARRICADE
- FLAGMAN / GATE GUARD
- CONTRACTOR CONSTRUCTION GATE ACCESS



**GRAPHIC SCALE**  
75 0 75 150  
(IN FEET)

- PHASE MUST START BEFORE SUBSEQUENT PHASE CAN START
- PHASE MUST FINISH BEFORE SUBSEQUENT PHASE CAN START
- PHASE MUST FINISH BEFORE SUBSEQUENT PHASE CAN FINISH

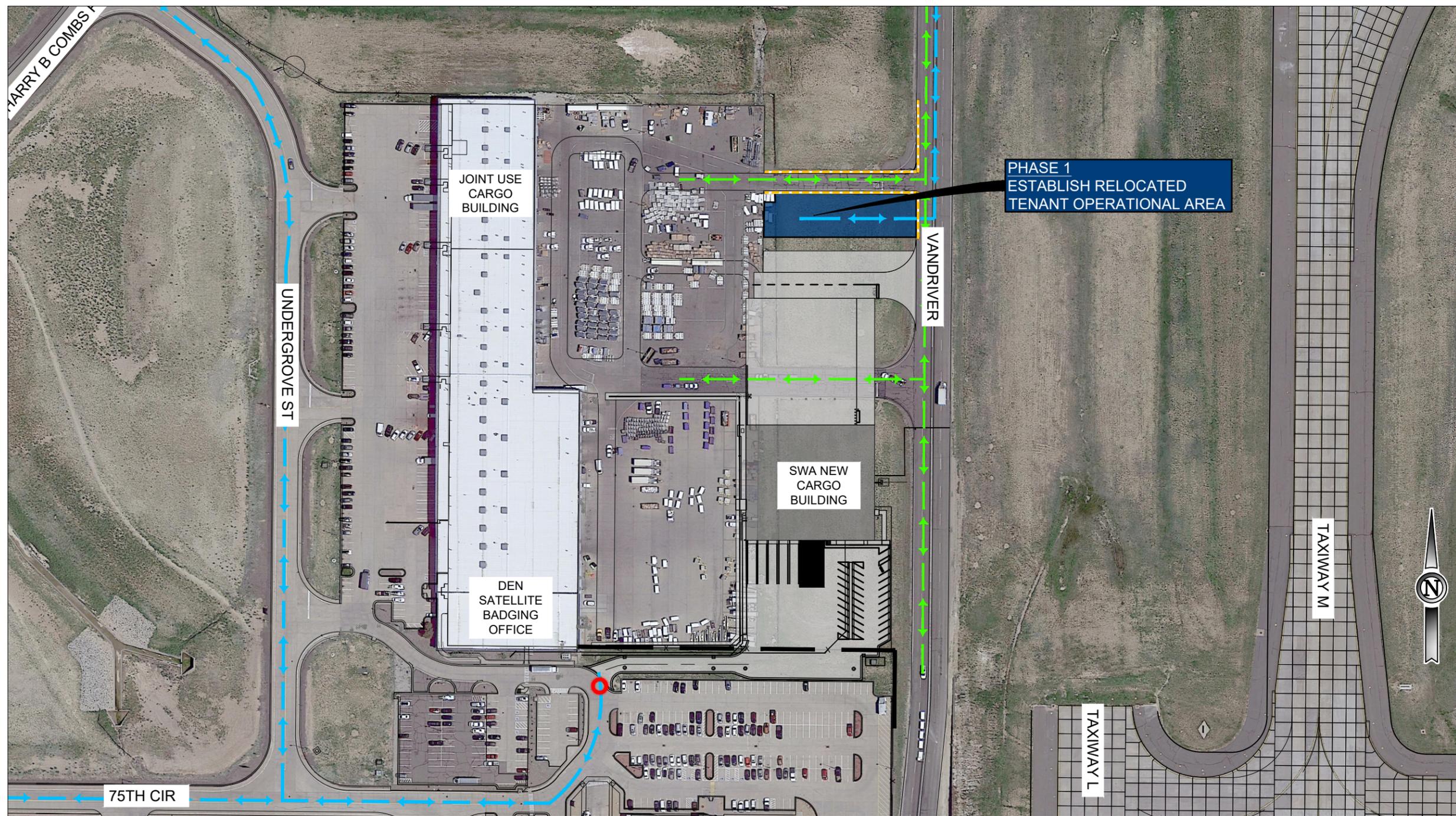
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CIVIL  
FOR AND ON BEHALF OF JVIATION, INC.

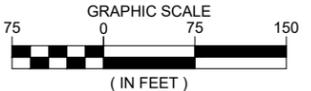
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 A WOOLPERT COMPANY		DES: S.W.K.	ISSUE REVIEW			SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION LAYOUT PLAN OVERALL PHASING PLAN	SHEET NAME G050
		DR: S.W.K.	NO.	BY	DATE			
CH: B.R.G.	1	SWK	12/31/2022	ISSUE FOR REVIEW		DEN PROJ. NO. SWA 2203	JVIATION PROJ. NO. 2022 SWA 02	
APP: S.W.K.								



**PHASING LEGEND**

- ↔ LIFE & SAFETY ROUTE
- ↔ CARGO OPERATIONAL ROUTE
- ↔ PEDESTRIAN ROUTE
- ↔ CONTRACTOR HAUL ROUTE (2 WAY TRAFFIC)
- ← CONTRACTOR HAUL ROUTE (1 WAY TRAFFIC)
- X  EXISTING AOA FENCE
- X  TEMPORARY AOA FENCE FOR CONSTRUCTION
- TEMPORARY CONSTRUCTION FENCING
- ULTIMATE AOA FENCE
- FLASHER BARRICADE
- ⚠ FLAGMAN / GATE GUARD
- CONTRACTOR CONSTRUCTION GATE ACCESS



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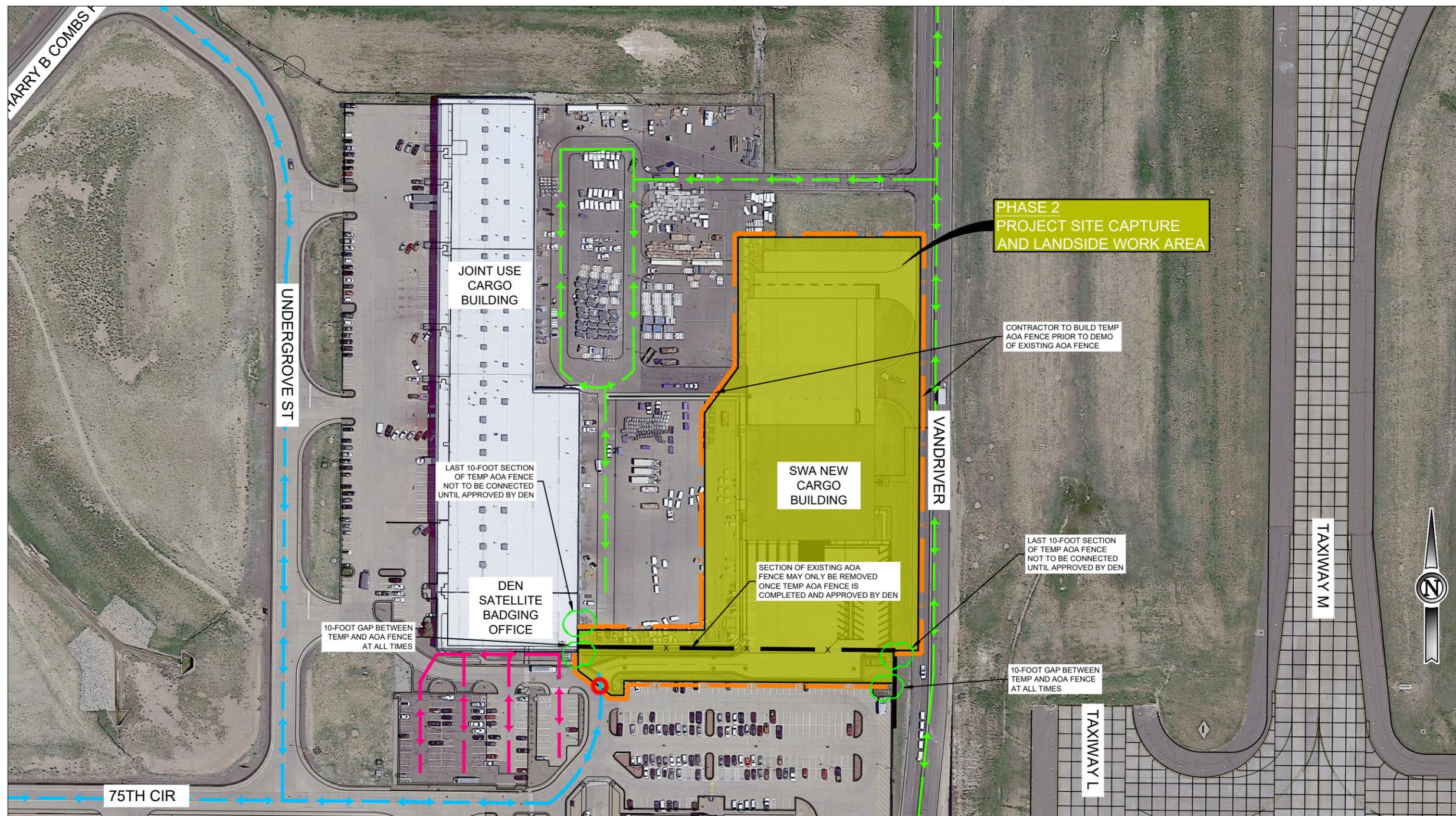
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CIVIL  
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**NOTES:**

1. THE CONTRACTOR SHALL COORDINATE AOA ACCESS POINTS AND SUBMIT NECESSARY MHTS A MINIMUM OF 2 WEEKS PRIOR TO COMMENCING ANY PHASE OF THE PROJECT TO DEN OPERATIONS.
2. CONTRACTOR SHALL HAVE A SWEEPER AVAILABLE AT ALL TIMES TO CLEAN DEBRIS AND FOD FROM AREAS WITHIN THE AOA.
3. CONTRACTOR SHALL MAINTAIN A MINIMUM OF ONE LANE OF TRAFFIC IN BOTH DIRECTIONS ON THE VEHICLE SERVICE ROADS (VSR) AT ALL TIMES. TRAFFIC MAY BE SEPARATED THROUGH THE USE OF CONES.
4. CONTRACTOR SHALL COORDINATE TO ENSURE ALL NECESSARY 7460 PERMITS ARE APPROVED PRIOR TO EACH PHASE.
5. CONTRACTOR SHALL COORDINATE WITH ADJACENT TENANTS 2 WEEKS PRIOR TO EACH PHASE COMMENCING.
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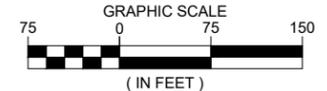
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 A WOOLPERT COMPANY		DES: S.W.K.	ISSUE REVIEW				SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION SAFETY PLAN PHASE 1	SHEET NAME G051
		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION			
		CH: B.R.G.					DEN PROJ. NO. SWA 2203	JVIATION PROJ. NO. 2022 SWA 02	
		APP: S.W.K.							



**PHASING LEGEND**

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- TEMPORARY CONSTRUCTION FENCING
- ULTIMATE AOA FENCE
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- X FLAGMAN / GATE GUARD
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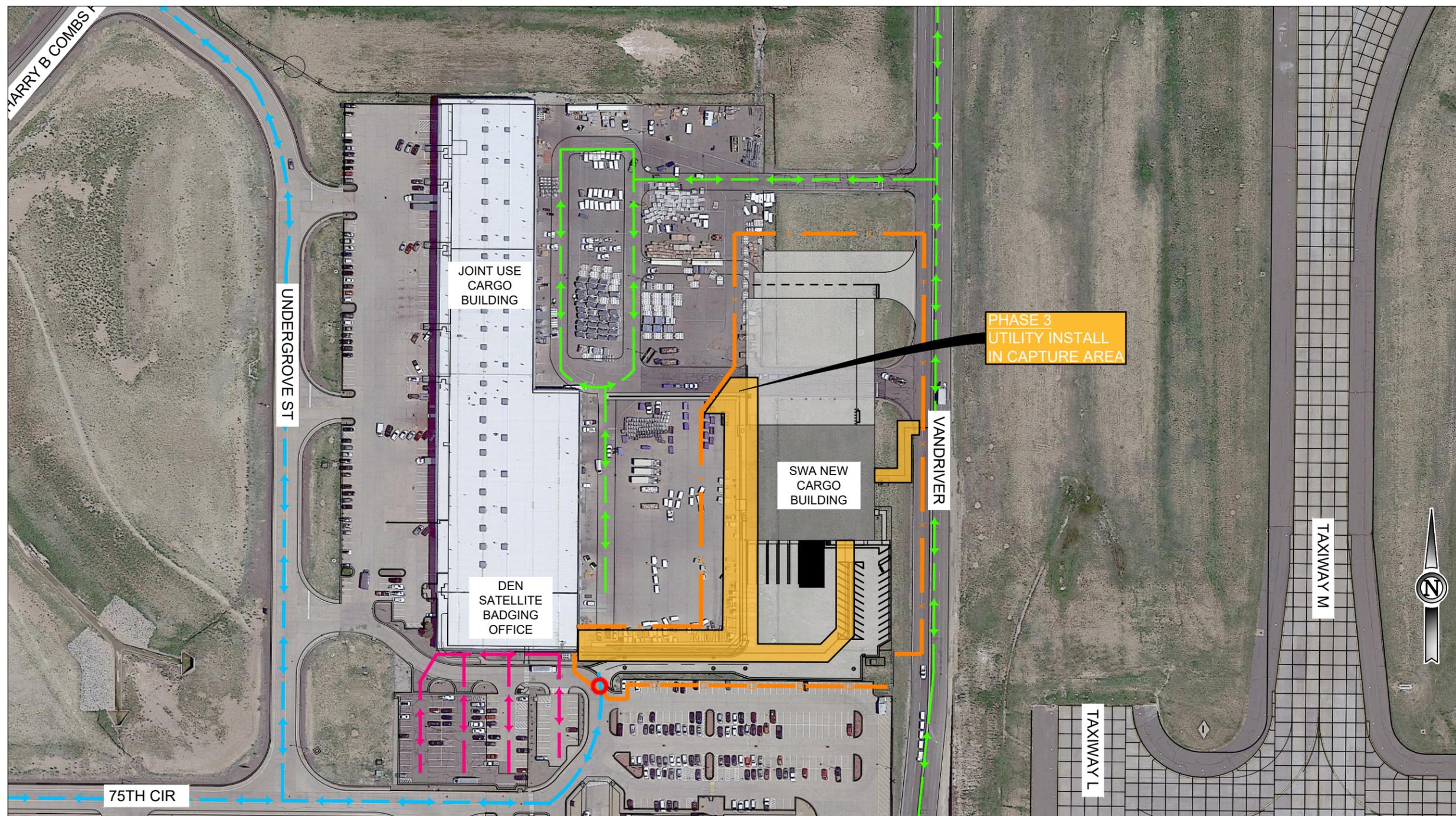
SETH W KURTZ 46522 11/17/2022  
CIVIL  
FOR AND ON BEHALF OF JVIATION, INC.

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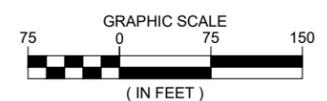
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 A WOOLPERT COMPANY		DES: S.W.K.	ISSUE REVIEW				SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION SAFETY PLAN PHASE 2	SHEET NAME G052
		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION			
		CH: B.R.G.	1	SWK	12/31/2022	ISSUE FOR REVIEW	DEN PROJ. NO. SWA 2203	JVIATION PROJ. NO. 2022 SWA 02	
		APP: S.W.K.							



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SETH W KURTZ      46522      11/17/2022  
CIVIL  
FOR AND ON BEHALF OF JVIATION, INC.



DES: S.W.K.	ISSUE REVIEW			
	NO.	BY	DATE	DESCRIPTION
DR: S.W.K.	1	SWK	12/31/2022	ISSUE FOR REVIEW
CH: B.R.G.				
APP: S.W.K.				

**SOUTHWEST AIRLINES  
NEW CARGO BUILDING**

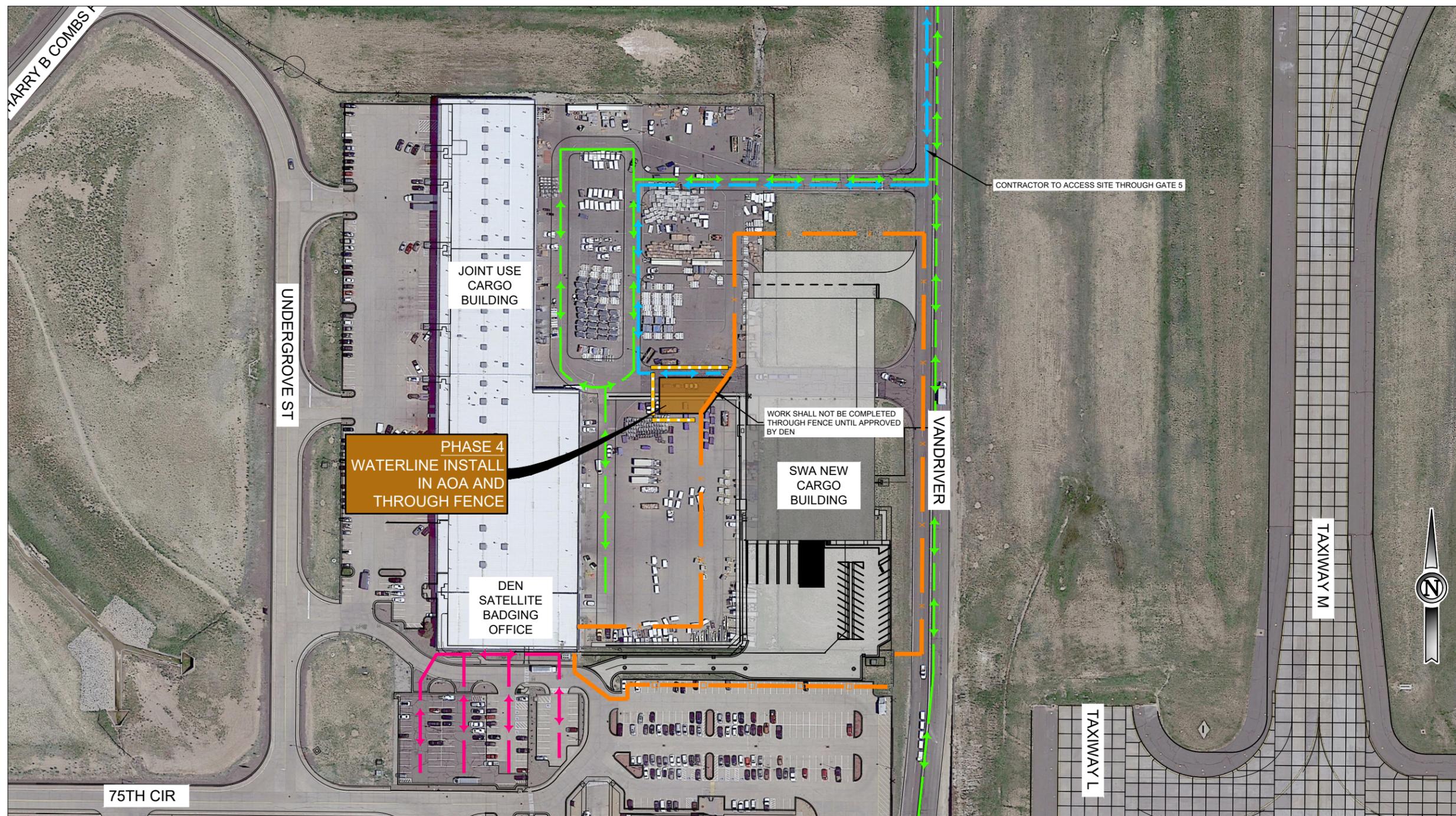
**CONSTRUCTION SAFETY PLAN  
PHASE 3**

DEN PROJ. NO. SWA 2203      JVIATION PROJ. NO. 2022 SWA 02

**SHEET NAME**  
G053

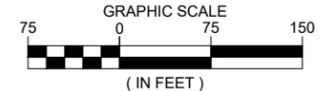
**SHEET NO.**  
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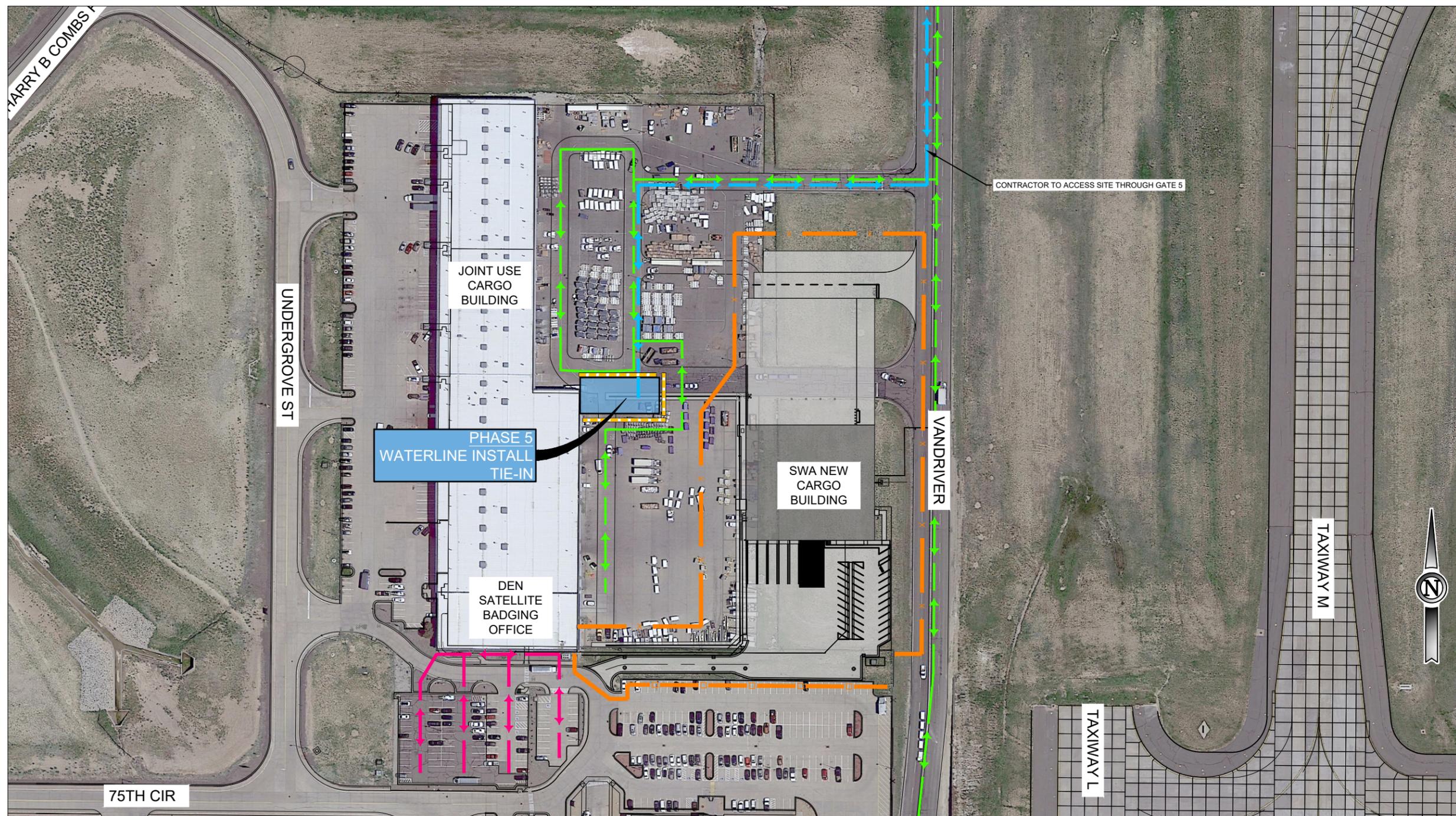
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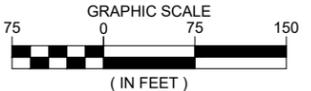
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		DES: S.W.K.	ISSUE REVIEW				SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION SAFETY PLAN PHASE 4	DEN PROJ. NO. SWA 2203	JVIATION PROJ. NO. 2022 SWA 02	SHEET NAME
		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION					G054
		CH: B.R.G.									SHEET NO.
		APP: S.W.K.									5 of 9



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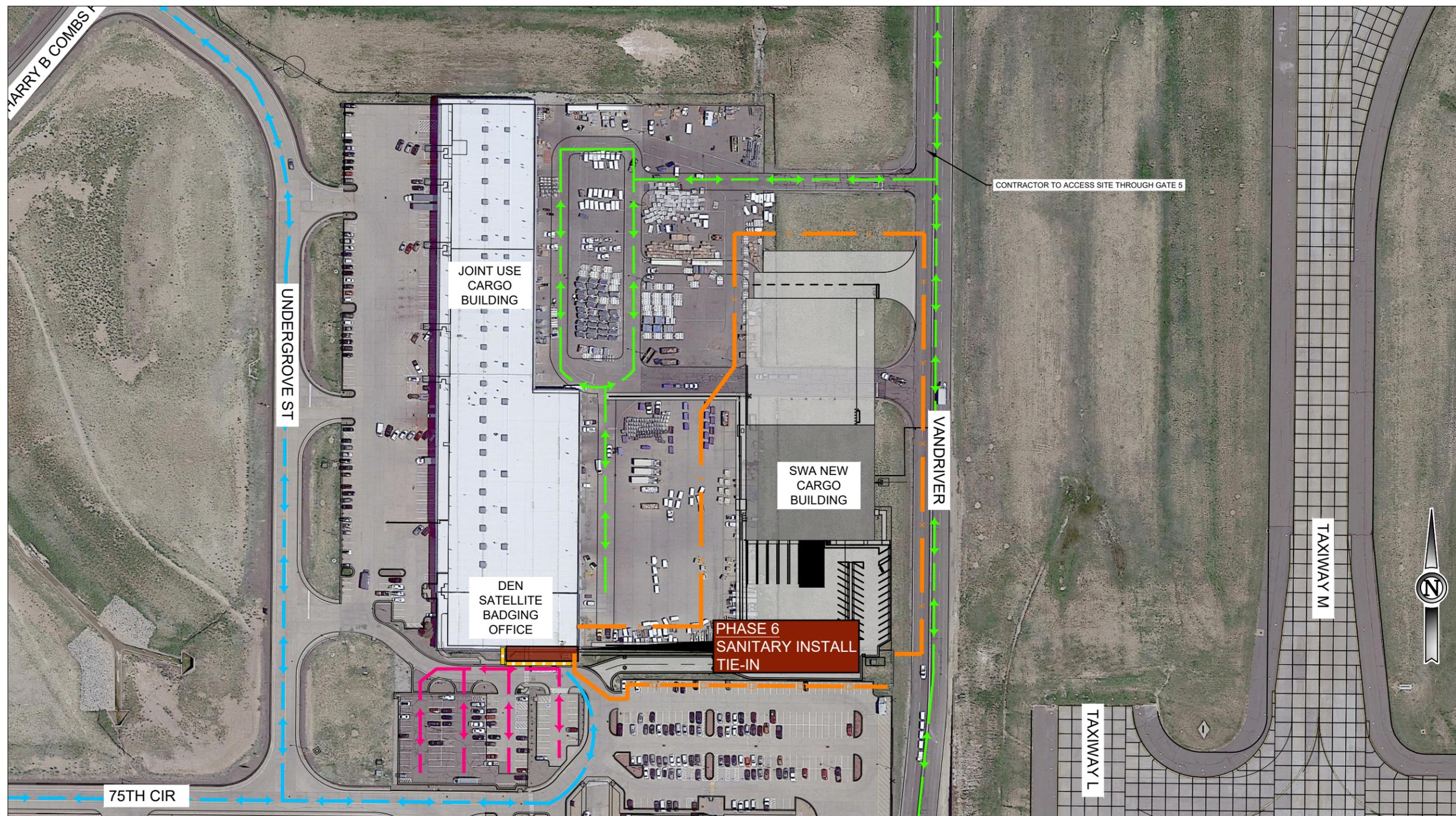
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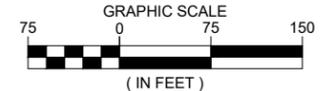
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 A WOOLPERT COMPANY		DES: S.W.K.	ISSUE REVIEW				SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION SAFETY PLAN PHASE 5	SHEET NAME G055
		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION			
		CH: B.R.G.	1	SWK	12/31/2022	ISSUE FOR REVIEW	DEN PROJ. NO. SWA 2203	JVIATION PROJ. NO. 2022 SWA 02	
		APP: S.W.K.							



**PHASING LEGEND**

- ↔ LIFE & SAFETY ROUTE
- ↔ CARGO OPERATIONAL ROUTE
- ↔ PEDESTRIAN ROUTE
- ↔ CONTRACTOR HAUL ROUTE (2 WAY TRAFFIC)
- ← CONTRACTOR HAUL ROUTE (1 WAY TRAFFIC)
- X  EXISTING AOA FENCE
- X  TEMPORARY AOA FENCE FOR CONSTRUCTION
- TEMPORARY CONSTRUCTION FENCING
- ULTIMATE AOA FENCE
- FLASHER BARRICADE
- ⚠ FLAGMAN / GATE GUARD
- CONTRACTOR CONSTRUCTION GATE ACCESS



ISSUED FOR REVIEW

THESE DRAWINGS ARE FOR DESIGN REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES. THEY WERE PREPARED BY OR UNDER THE SUPERVISION OF:

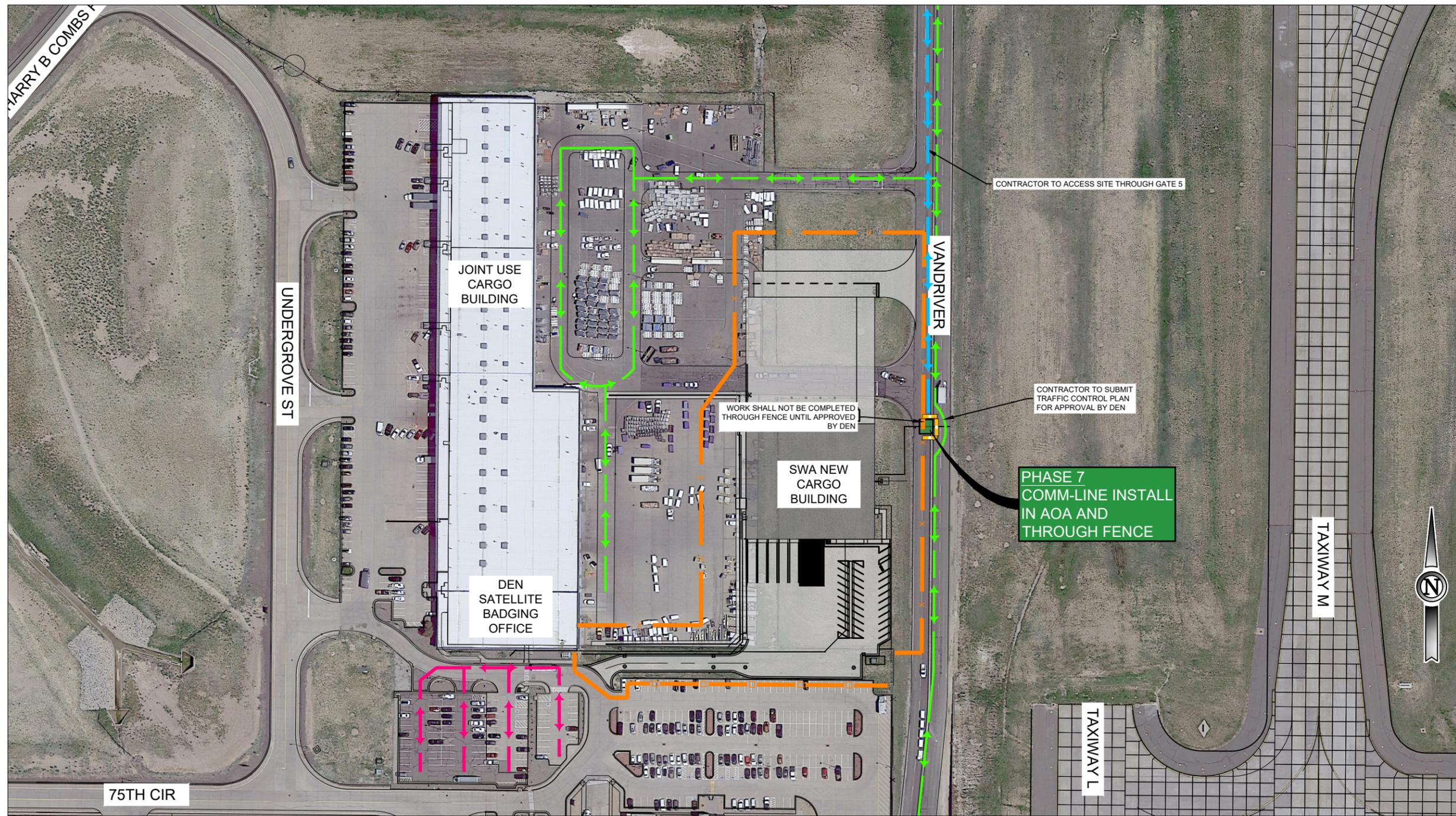
SETH W KURTZ 46522 11/17/2022  
CIVIL  
FOR AND ON BEHALF OF JVIATION, INC.

**NOTES:**

1. THE CONTRACTOR SHALL COORDINATE AOA ACCESS POINTS AND SUBMIT NECESSARY MHTS A MINIMUM OF 2 WEEKS PRIOR TO COMMENCING ANY PHASE OF THE PROJECT TO DEN OPERATIONS.
2. CONTRACTOR SHALL HAVE A SWEEPER AVAILABLE AT ALL TIMES TO CLEAN DEBRIS AND FOD FROM AREAS WITHIN THE AOA.
3. CONTRACTOR SHALL MAINTAIN A MINIMUM OF ONE LANE OF TRAFFIC IN BOTH DIRECTIONS ON THE VEHICLE SERVICE ROADS (VSR) AT ALL TIMES. TRAFFIC MAY BE SEPARATED THROUGH THE USE OF CONES.
4. CONTRACTOR SHALL COORDINATE TO ENSURE ALL NECESSARY 7460 PERMITS ARE APPROVED PRIOR TO EACH PHASE.
5. CONTRACTOR SHALL COORDINATE WITH ADJACENT TENANTS 2 WEEKS PRIOR TO EACH PHASE COMMENCING.
6. CONTRACTOR IS REQUIRED TO CONTINUOUSLY MONITOR AND MAINTAIN FOD TO THE SATISFACTION OF THE SOUTHWEST PROJECT MANAGER AND DEN OPERATIONS.
7. THE CONTRACTOR IS ADVISED THAT DUST CONTROL, CLEANUP OF ACTIVE PAVEMENTS, TRACKING DEBRIS ONTO PAVEMENT AND GENERAL JOBSITE CLEANLINESS IS A SERIOUS SAFETY CONCERN. FOD IS CONSIDERED AS ANY ITEM THAT COULD POSSIBLY IMPACT THE OPERATIONS OF AN AIRPORT OR ROADWAY. FOD COULD CAUSE INJURY OR DEATH THROUGH INGESTION IN MOVING AIRCRAFT ENGINES. SPECIFIC ITEMS OF CONCERN INCLUDE, BUT ARE NOT LIMITED TO: ANY PACKAGING FROM MATERIAL INSTALLATION, GRAVEL LEFT ON ACTIVE PAVEMENTS, DUST TRACKED ONTO ACTIVE PAVEMENTS, HAND TOOLS, HARDWARE DROPPED, ETC.
8. CONTRACTOR SHALL ADHERE TO DEN SECURITY REQUIREMENTS AT ALL TIMES. SECURITY IDENTIFICATION BADGES AND RELATED AIRPORT FAMILIARIZATION REQUIREMENTS ARE MANDATORY.
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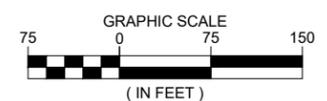
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		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION			
		CH: B.R.G.						SHEET NO.	
		APP: S.W.K.						7 of 9	
		DEN PROJ. NO. SWA 2203		JVIATION PROJ. NO. 2022 SWA 02					



**PHASING LEGEND**

- LIFE & SAFETY ROUTE
- CARGO OPERATIONAL ROUTE
- PEDESTRIAN ROUTE
- CONTRACTOR HAUL ROUTE (2 WAY TRAFFIC)
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**ISSUED FOR REVIEW**

THESE DRAWINGS ARE FOR DESIGN REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES. THEY WERE PREPARED BY OR UNDER THE SUPERVISION OF:

SETH W KURTZ      46522      11/17/2022  
CIVIL  
FOR AND ON BEHALF OF JVIATION, INC.

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		DES: S.W.K.	ISSUE REVIEW				SOUTHWEST AIRLINES NEW CARGO BUILDING	CONSTRUCTION SAFETY PLAN PHASE 7	SHEET NAME G057
		DR: S.W.K.	NO.	BY	DATE	DESCRIPTION			
		CH: B.R.G.	1	SWK	12/31/2022	ISSUE FOR REVIEW			
		APP: S.W.K.							

DEN PROJ. NO. SWA 2203      JVIATION PROJ. NO. 2022 SWA 02



**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit G**  
**Form of CMR Performance and Payment Bonds**

Bond No. \_\_\_\_\_

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we, MCCARTHY BUILDING COMPANIES, INC. (“Principal”), and \_\_\_\_\_, Surety herein, a corporation duly organized under the laws of the State of \_\_\_\_\_ and authorized to issue surety bonds in the State of Colorado, are held and firmly bound unto SOUTHWEST AIRLINES CO. (“Southwest” and/or “Obligee”) in the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.00) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has entered into that certain Construction Manager at Risk Agreement, hereinafter referred to as the “Contract,” with Southwest dated the 3rd day of August 2022, for preconstruction and construction services related to the Southwest Airlines Co. Cargo Facility project at Denver International Airport, Denver, Colorado (the “Project”); and

**WHEREAS**, the CITY AND COUNTY OF DENVER (“DEN”) is the owner of the real property on which the improvements are to be constructed; and

**WHEREAS**, the DEN DEPARTMENT OF AVIATION (“DDOA”) manages Denver International Airport; and

**WHEREAS**, pursuant to that certain Airline Cargo Facility Lease Agreement (the “Agreement”) by and among the DEN and Southwest, Southwest is responsible for the construction the Project;

**NOW, THEREFORE**, the condition of this obligation is such, that if the said Principal (a) shall faithfully construct the improvements as provided in the Contract in accordance with the plans, specifications, and contract documents, and (b) shall fully indemnify and save harmless Obligee from all costs and damage which Obligee may suffer by reason of Principal’s default, and (c) shall reimburse and repay Obligee all outlay and expense which Obligee may incur in making good such default, then this obligation shall be void; otherwise to remain in full force and effect.

Whenever Principal shall be, and declared by Obligee to be, in default under the Contract, Obligee, having performed Obligee’s obligations thereunder, may call upon the Surety who shall promptly remedy the default and:

1. Complete the Contract in accordance with the terms and conditions; or
2. Obtain a bid or bids for completion of the Contract in accordance with its terms and conditions, and, upon determination by Surety of the lowest responsible bidder, arrange for a contract between such bidder and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not

exceeding. including other costs and damages for which Surety may be liable hereunder, the amounts set forth in the first paragraph hereof. The term “balance of the contract price” as used in this paragraph shall mean total amount payable by Oblige to Principal under, the Contract and any amendment; thereto, less the amount properly paid by Oblige to Principal.

Surety, for value received, stipulates and agrees that no change, extension or time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder.

Surety expressly agrees to be bound to, and shall have the right to participate in, any mandatory dispute resolution procedures required in the Contract therein incorporated with regard to any claim asserted against this Bond.

This Bond is given pursuant to the provisions of the laws of the State of Colorado. If any legal action be filed upon this Bond, exclusive venue shall lie in Denver County, State of Colorado.

**IN WITNESS WHEREOF**, this instrument has been executed by the duly authorized representatives of the Principal and the Surety.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_ 2023.

Principal:

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

Its: \_\_\_\_\_

Surety:

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

Its: \_\_\_\_\_

[Attach Power of Attorney for Surety’s Attorney-in-Fact]

Approved:

**SOUTHWEST AIRLINES CO.**

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

Its: \_\_\_\_\_

Bond No. \_\_\_\_\_

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we, MCCARTHY BUILDING COMPANIES, INC., (“Principal”), and \_\_\_\_\_, Surety herein, a corporation duly organized under the laws of the State of \_\_\_\_\_, and authorized to issue surety bonds in the State of Colorado, are held and firmly bound unto SOUTHWEST AIRLINES CO. (“Southwest” and/or “Obligee”) in the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.00) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has entered into that certain Construction Manager at Risk Agreement, hereinafter referred to as the “Contract,” with Southwest dated the 3rd day of August 2022, for preconstruction and construction services related to the Southwest Airlines Co. Cargo Facility project at Denver International Airport, Denver, Colorado (the “Project”); and

**WHEREAS**, the CITY AND COUNTY OF DENVER (“DEN”) is the owner of the real property on which the improvements are to be constructed; and

**WHEREAS**, the DEN DEPARTMENT OF AVIATION (“DDOA”) manages Denver International Airport; and

**WHEREAS**, pursuant to that certain Airline Cargo Facility Lease Agreement (the “Agreement”) by and among the DEN and Southwest, Southwest is responsible for the construction the Project;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the said Principal shall make payments of all amounts lawfully due to all persons supplying or furnishing Principal or Principal's subcontractors with labor, materials, team hire, sustenance, provisions, provender, rental machinery, tools, or equipment, or other supplies performed, used or consumed in the prosecution of the work provided for under the Contract and duly authorized normal and usual extras thereto, and, further, that Principal indemnifies and saves harmless Southwest, the DEN, and DDOA to the extent of any payments in connection with the carrying out of any such Contract which they may be required to make under the law, then this obligation shall be void; otherwise to remain in full force and effect.

Principal and Surety further warrant that if Principal fails to pay any person who supplies laborers, rental machinery, tools, or equipment, all amounts due as the result of the use of such laborers, machinery, tools, or equipment, in the prosecution of the Work under the Contract, Surety will pay the same in an amount not exceeding the penal sum specified herein together with interest at the rate of eight percent (8%) per annum.

Provided, however, that Southwest, DEN, and DDOA, having required Principal to furnish this Bond in order to comply with the provisions of COLO. REV. STAT. §§38-26-106 and 38-24-101, *et seq.*, as applicable, all rights and remedies under this Bond shall be determined in

accordance with the provisions, conditions, and limitations of said statutes to the same extent as if they were copied at length herein. This Bond is given pursuant to the provisions of the law of the State of Colorado. If any legal action be filed upon this Bond, exclusive venue shall lie in Denver County, State of Colorado.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument on the \_\_\_\_ day of \_\_\_\_\_ 2023.

Principal:

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

Its: \_\_\_\_\_

Surety:

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

Its: \_\_\_\_\_

[Attach Power of Attorney for Surety’s Attorney-in-Fact]  
[Insert: Statutory Surety Identification/Complaint Notice.]

Approved:

**SOUTHWEST AIRLINES CO.**

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

Its: \_\_\_\_\_

Bond No. \_\_\_\_\_

**JOINT OBLIGEE RIDER**  
**TO CMR'S PERFORMANCE BOND AND PAYMENT BOND**

**WHEREAS**, MCCARTHY BUILDING COMPANIES, INC., ("CMR") has entered into that certain Construction Manager at Risk Agreement, hereinafter referred to as the "Contract", with SOUTHWEST AIRLINES CO. ("Southwest" and/or "Obligee") dated the \_\_\_\_ day of \_\_\_\_ 2022 for preconstruction and construction services related to the Southwest Airlines Co. Cargo Facility project at Denver International Airport, Denver, Colorado (the "Project"); and

**WHEREAS**, CMR, as Principal, and \_\_\_\_\_ as Surety (hereinafter referred to as "Surety"), made, executed, and delivered to Southwest, as Obligee, their joint and several Performance Bond and a Payment Bond (collectively, the "Bonds"); and

**WHEREAS**, the CITY AND COUNTY OF DENVER ("DEN") is the owner of the real property on which the improvements are to be constructed; and

**WHEREAS**, the DEN DEPARTMENT OF AVIATION ("DDOA") manages the Denver International Airport; and

**WHEREAS**, pursuant to that certain Airline Cargo Facility Lease Agreement (the "Agreement") by and among the DEN and Southwest, Southwest is responsible for the construction the Project; and

**WHEREAS**, DEN and DDOA have requested CMR and its Surety to join with Southwest in execution and delivery of this Rider, and they have agreed to do so upon the conditions herein stated.

**NOW, THEREFORE**, in consideration of One Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

The bonds as aforesaid shall be and it is hereby amended as follows:

1. The DEN and DDOA are hereby added to the Bonds as Joint Obligees (the "Governmental Obligees").
2. The aggregate liability of the Surety under said Bonds to Obligee and the Governmental Obligees, as their interests may appear, is limited to the penal sums of the Bonds.
3. Surety's obligation to perform hereunder is included within its obligations under the Bonds to which this rider is attached; provided that such obligation shall be

conditioned on Governmental Obligees having performed as required under the Amendment and, provided further, that such obligation shall be without regard for Obligee’s compliance under the Contract.

- 4. All rights and remedies under the Bonds with regard to the Governmental Obligees shall be determined in accordance with the provisions, conditions, and limitations of the laws of the State of Colorado.
- 5. Except as herein modified, said Bonds shall be and remain in full force and effect.

No right of action shall accrue hereunder to or for the use of any person, firm, or corporation other than Southwest and the Governmental Obligees named herein.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2023.

Principal:

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

Its: \_\_\_\_\_

Surety:

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

Its: \_\_\_\_\_

[Attach Power of Attorney for Surety’s Attorney-in-Fact]

Approved:

**SOUTHWEST AIRLINES CO.**

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

Its: \_\_\_\_\_

**THE CITY AND COUNTY OF DENVER**

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

Its: Mayor

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

Its: CEO, Department of Aviation

**Approved As To Form:**

Kerry Tipper, Attorney for the City and  
County of Denver

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

David Steinberger, Assistant City Attorney

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit H**  
**Certificate of Completion**

**EXHIBIT H**

**Notice of Construction Completion**

To: Chief Executive Officer  
Department of Aviation  
Denver International Airport  
AOB - 9th Floor  
8500 Peña Boulevard  
Denver, Colorado 80249-6340

From: Airport Affairs Representative  
Southwest Airlines Co.  
2702 Love Field Drive, HDQ/4PF  
Dallas, Texas 75235-169311

1. The City and County of Denver, a municipal corporation of the State of Colorado (“City”), and Southwest Airlines, Co., a corporation organized and existing under and by virtue of the laws of the State of Texas and authorized to do business in the State of Colorado (“Airline”), are parties to the Airline Cargo Facility Lease Agreement, identified as City Contract 202262387 (the “Amendment”).

2. Part II of the Agreement governs Airline’s construction of a new cargo building at the Denver International Airport.

3. In Section 2.05.E of the Agreement, the Parties agreed to memorialize (i) completion of the construction as described in the Contract Documents and (ii) issuance of a Certificate of Substantial Completion for the Cargo Facility.

4. Through its execution of this Notice of Construction Completion, Airline hereby memorializes (i) completion of the construction as described in the Contract Documents and (ii) issuance of a Certificate of Substantial Completion for the Cargo Facility.

SOUTHWESY AIRLINES, CO.

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit I**  
**Insurance Requirements - Construction**

**EXHIBIT I**

**CITY AND COUNTY OF DENVER  
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION  
CONSTRUCTION AGREEMENT (NONROCIP)**

**A. Certificate Holder and Submission Instructions**

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249  
Attn/Submit to: [airlineaffairsadmin.sharedmailbox@flydenver.com](mailto:airlineaffairsadmin.sharedmailbox@flydenver.com)

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

**B. Defined Terms**

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Contractor" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

**C. Coverages and Limits**

1. Commercial General Liability:

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and unescorted airside driving privileges are required, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.

- d. If transporting waste, hazardous material, or regulated substances, Consultant shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
  - e. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that one or both of the following coverages are maintained as appropriate: (i) Personal Automobile Liability including a Business Use Endorsement by the vehicle owner and (ii) Non-Owned Auto Liability by the Contractor.
3. **Workers' Compensation and Employer's Liability Insurance:**

Contractor shall maintain workers compensation coverage in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

  - a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing Contractor exemption status must be submitted with the Certificate of Insurance.
4. **Contractors Pollution Liability:**

Contractor shall maintain insurance covering work site operations that are conducted on DEN premises including project management and site supervision duties with a limit no less than \$1,000,000 each occurrence and \$2,000,000 annual policy aggregate for claims arising out of a pollution condition or site environmental condition.

  - a. Coverage shall include claims/losses for bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and cleanup cost for pollution conditions resulting from illicit abandonment, the discharge, dispersal, release, escape, migration or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis, chemicals, electromagnetic fields, hazardous substances, hazardous materials, waste materials, low level radioactive waste, mixed wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater on DEN premises.
  - b. Work site means a location where covered operations are being performed, including real property rented or leased from the City for the purpose of conducting covered operations.
5. **Professional Liability (Errors & Omissions):**

Contractor shall maintain a minimum limit of \$1,000,000 per occurrence and annual policy aggregate, providing coverage for applicable services outlined in this Agreement.
6. **Property Insurance:**

Contractor is solely responsible for any loss or damage to their real or personal property including, without limitation, property, materials, tools, equipment, and structures. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section E will be required from its insurer.
7. **Builder's Risk or Installation Floater:**

During the duration of any tenant buildout activity, Contractor shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:

  - a. apply from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which

- the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
  - b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
  - c. include interests of the DEN and if applicable, affiliated, or associate entities, the General Contractor, subcontractors, and sub-tier contractors in the project;
  - d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
  - e. include a Beneficial Occupancy Clause and shall specifically permit occupancy of the building during construction. City and County of Denver Concessionaire shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;
  - f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).
8. Unmanned Aerial Vehicle (UAV) Liability:  
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
- a. Express written permission must be granted by DEN.
  - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
  - c. Drone equipment must be properly registered with the FAA.
  - d. Drone operator(s) must be properly licensed by the FAA.
  - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
9. Excess/Umbrella Liability:  
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

**D. Reference to Project and/or Contract**

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance, if applicable.

**E. Additional Insured**

For all coverages required under this Agreement (excluding Workers' Compensation, Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

**F. Waiver of Subrogation**

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

**G. Notice of Material Change, Cancellation or Nonrenewal**

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

#### **H. Additional Provisions**

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
5. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. . All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information, or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage required under this Agreement shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Contractor's failure to maintain the insurance required by this Agreement shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

**Southwest Airlines, Co.**  
**Cargo Facility Lease Agreement PLANE-202262387**

**Exhibit J**  
**Insurance Requirements – Facility Operation**

**EXHIBIT J**

**CITY AND COUNTY OF DENVER  
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION  
SUPPORT FACILITIES LEASE AGREEMENT**

**A. Certificate Holder and Submission Instructions**

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249  
Attn/Submit to: [airlineaffairsadmin.sharedmailbox@flydenver.com](mailto:airlineaffairsadmin.sharedmailbox@flydenver.com)

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

**B. Defined Terms**

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Contractor" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

**C. Coverages and Limits**

1. Commercial General Liability:

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. Coverage shall include Fire Damage Legal Liability in a minimum limit of \$100,000 any one fire.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and unescorted airside driving privileges are required, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.

- d. If transporting waste, hazardous material, or regulated substances, Consultant shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
  - e. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that one or both of the following coverages are maintained as appropriate: (i) Personal Automobile Liability including a Business Use Endorsement by the vehicle owner and (ii) Non-Owned Auto Liability by the Contractor.
3. Workers' Compensation and Employer's Liability Insurance:  
Contractor shall maintain workers compensation coverage in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
  - a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing Contractor exemption status must be submitted with the Certificate of Insurance.
4. Pollution Legal Liability:  
Contractor shall maintain insurance covering work site operations that are conducted on DEN premises including project management and site supervision duties with a limit no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate for claims arising out of a pollution condition or site environmental condition.
  - a. Coverage shall include claims/losses for bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and cleanup cost for pollution conditions resulting from illicit abandonment, the discharge, dispersal, release, escape, migration or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis, chemicals, electromagnetic fields, hazardous substances, hazardous materials, waste materials, low level radioactive waste, mixed wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater on DEN premises.
  - b. Work site means a location where covered operations are being performed, including real property rented or leased from the City for the purpose of conducting covered operations.
5. Property Insurance – Business Interruption Coverage:  
Business Interruption Coverage in such amounts as will reimburse Contractor for direct or indirect loss of earnings attributable to the perils commonly covered by business interruption insurance, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.
6. Property Insurance – Business Personal Property:  
Contractor is solely responsible for any loss or damage to their business personal property or personal property of its employees and subcontractors, including, without limitation, furnishings, materials, tools, and equipment. If Contractor carries property insurance on its personal property located on DEN premises, a waiver of subrogation as outlined in Section E will be required from its insurer.
7. Property Insurance – Real Property:  
Contractor shall maintain All-Risk Form Property Insurance on a replacement cost basis. If real property is located in a flood or quake zone (including land subsidence), flood or quake insurance shall be provided separately or within the property policy.
  - a. City shall be included as Loss Payee, as its interests may appear.

- b. Replacement value shall be validated at intervals of no more than five (5) years, commencing on the date of the Agreement, by an independent qualified appraiser hired by the Contractor and approved by the City.
- c. Schedule of Premises Insured by Contractor:  
[list specific addresses of buildings]

8. Builder's Risk Insurance or Installation Floater:

During the duration of any Contractor buildout activity, Contractor shall provide, Builders' Risk Insurance on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:

- a. apply from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
- b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
- c. include interests of the DEN and if applicable, affiliated or associate entities, the General Contractor, subcontractors and sub-tier contractors in the project;
- d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
- e. include a Beneficial Occupancy Clause and shall specifically permit occupancy of the building during construction. City and County of Denver Contractor shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;
- f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

9. Unmanned Aerial Vehicle (UAV) Liability:

If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:

- a. Express written permission must be granted by DEN.
- b. Express written permission must be granted by the Federal Aviation Administration (FAA).
- c. Drone equipment must be properly registered with the FAA.
- d. Drone operator(s) must be properly licensed by the FAA.
- e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

10. Excess/Umbrella Liability:

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

**D. Reference to Project and/or Contract**

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance, if applicable.

**E. Additional Insured**

For all coverages required under this Agreement (excluding Workers' Compensation, Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

**F. Waiver of Subrogation**

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

**G. Notice of Material Change, Cancellation or Nonrenewal**

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

**H. Additional Provisions**

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
5. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.

10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. . All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information, or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage required under this Agreement shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Contractor's failure to maintain the insurance required by this Agreement shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.