

AGREEMENT

BETWEEN

CITY AND COUNTY OF DENVER

AND

COLORADO AIR NATIONAL GUARD

GROUND RENTAL AGREEMENT

THIS AGREEMENT is entered into as of the date indicated on the signature page below, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation ("City"), Party of the First Part, and **COLORADO AIR NATIONAL GUARD**, a Government unit ("Government"), Party of the Second Part.

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;

WHEREAS, the Government needs to stage various aircraft while Buckley Air Force Base undergoes runway rehabilitation work; and

WHEREAS, the parties desire to enter into this Agreement for the use of certain premises and facilities at the Airport all as more fully hereinafter set forth;

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

PART 1 USE OF DEMISED PREMISES

1.01 DEMISED PREMISES

The City, for and in consideration of the covenants and agreements hereinafter contained, hereby leases to the Government, subject to the conditions hereinafter expressed, those certain parcels of real property depicted on the attached drawing and legal description marked Exhibit A and situated in the City and County of Denver, State of Colorado, hereinafter referred to as the "Demised Premises."

1.02 USE OF DEMISED PREMISES

The Government shall use the Demised Premises for the following purposes during the term of this Agreement and for such other purposes as may be authorized in writing from time to time by the Manager, but for no other purpose or purposes:

- a. The portion of the Demised Premises designated by Exhibit A for the exclusive use of the Government for aircraft and ground equipment storage and other uses.

Notwithstanding any language to the contrary in this Agreement, it is expressly agreed and understood that the forgoing use is not a property right and shall not be assigned, subleased or otherwise alienated or hypothecated in any manner whatsoever by the Government.

1.03 PAYMENT OF FEES AND CHARGES

Payments for the Demised Premises shall commence on the date of the commencement of the Term provided herein and shall be paid in equal monthly installments, and shall be due and payable without notice on or before the first day of the then current month.

The Government agrees to pay ground rentals, rates, fees and charges established and fixed in accordance with the amounts listed in Exhibit B.

PART II COOPERATION & COORDINATION

2.01 COOPERATION

The parties understand that the operational requirements of both DIA and the Government may change over time. The parties shall cooperate and coordinate in their best efforts with each other in any and all work, activities and operations that are subject to this Memorandum of Agreement. Representative of the Airport and the Government shall meet weekly during the term of this Memorandum of Agreement to coordinate their operations and activities and evaluate the mutual operations that will occur hereunder. The parties will use best faith efforts in modifying this agreement as necessary to accommodate daily operations needs or to carry out the overall purposes to this agreement.

PART III GENERAL PROVISIONS

3.01 "MANAGER" DEFINED

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

3.02 MANAGER'S AUTHORIZED REPRESENTATIVE

Wherever reference is made herein to the "Manager's authorized representative", or words of similar import are used, such officer or employee of the City as shall be hereafter designated in writing by the Manager shall be such authorized representative of said Manager until notice otherwise is hereafter given to the Government.

3.03 AGREEMENTS WITH THE UNITED STATES

This Agreement 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. Appendices 1, 2, 3 and 10 are attached hereto and the provisions thereof are incorporated herein by reference.

3.04 BOND ORDINANCE

This Agreement 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.

The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Government agrees not to take any action that would impair, or omit to take any action required to conform, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Government agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bond and shall execute such forms and take such other action as the City may request in order to implement such election.

3.05 LAWS, REGULATIONS AND AGREEMENTS TO BE OBSERVED

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

(B) The Government shall comply with and shall cause its officers and employees and any other persons over whom it has control to comply with such reasonable rules and regulations governing the use of the Demised Premises and any other portion of the Airport as may from time to time be adopted and promulgated by the City for the management, operation and control of the Airport, 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 Government; provided, further, that nothing herein shall be considered to restrict the police power of the City.

3.06 DISPUTES

Disputes shall be handled using the procedures as found in IAW FAR Subpart 33.2 Disputes and Appeals. The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim.

PART IV TERM OF THE AGREEMENT

4.01 TERM OF AGREEMENT

The term shall begin on April 1, 2014 and expire no later than July 31, 2014, unless otherwise agreed to by the parties. This Agreement may be extended for an additional 90 days by a letter agreement between the parties without the necessity of official NGB or City formal authorization.

4.02 SURRENDER AND HOLDING OVER

Should the Government hold over the use of or continue to occupy any portion of such Demised Premises after the expiration of the term of this Agreement, such holding over shall be deemed merely a tenancy from month to month. Rent, fees and charges for each month of such holding over shall be paid as provided herein and in a sum equal to the monthly rental required for the month prior to the end of the term hereof or as reestablished as provided for herein. All conditions as herein or hereafter provided shall remain the same, except for term.

4.03 TERMINATION OF HOLDOVER

If the Government holds over pursuant to Section 4.05 hereof, 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 V RESERVED

PART VI QUIET ENJOYMENT; INCONVENIENCES DURING CONSTRUCTION

6.01 COVENANT OF QUIET ENJOYMENT

Upon the payment by Government of all rentals, rates, fees and charges properly assessed to Government and the performance of the covenants and agreements on the part of Government to be performed hereunder, Government shall peacefully have and enjoy the premises, appurtenances, facilities, licenses and privileges granted herein; provided, however, it is recognized that certain temporary inconveniences may occur during construction.

6.02 INCONVENIENCES DURING CONSTRUCTION

The Government recognizes that from time to time during the term of this Agreement 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 Government in its operations at the Airport. The Government 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 Agreement of

the Demised Premises, the Government waives any right to claim damages or other consideration for such minor inconvenience or minor discomfort.

PART VII MISCELLANEOUS PROVISIONS

7.01 AGREEMENT BINDING

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

7.02 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 Agreement.

7.03 SIGNS

The Government agrees that no signs or advertising displays shall be painted on or erected in any manner upon its Demised Premises without the prior written approval of the City's Manager or the Manager's authorized representative; and that signs identifying the Government will conform to reasonable standards established by the Manager, or the Manager's authorized representative, with respect to type, size, design, location and content.

7.04 NON-DISCRIMINATION

The Government, for itself, its successors and assigns, as a part of the consideration hereof does hereby agree as follows:

(A) As more fully set forth in Appendix No. 1 attached hereto and incorporated herein by reference, if facilities are constructed, maintained or otherwise operated on the Demised Premises 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 Government shall maintain and operate such facilities and services in compliance with all requirements of 49 C.P.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.

(B) The Government will in all of its operations and activities in and at the Airport comply with all requirements of the Air Carrier Access Act, 49 U.S.C. § 41705, and regulations implementing such Act at 14 C.F.R. Part 382, and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* and regulations implementing such Act.

7.05 NO PERSONAL LIABILITY

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

7.06 NOTICES

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:

To City: Manager of Aviation
 Airport Office Building, 9th Floor
 8500 Peña Boulevard,
 Denver, CO 80249-6340

With a copy to: Dan Sprinkle
 Airport Operations
 City and County of Denver
 Department of Aviation
 8500 Peña Boulevard, AOB Mail
 Room
 Denver, CO 80249-6340

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

To Permittee: MSgt Lia Arthofer, Contracting Officer
 Colorado Air Nat'l Guard, Buckley AFB
 18860 E Breckenridge Ave, Stop 78
 Buckley Air Force Base, CO 80011

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 Government or said Manager.

7.07 PLACE AND MANNER OF PAYMENTS

Payments are subject to electronic payments via the Wide Area Work Flow system, this is an online invoicing system that is mandatory for Air National Guard contractors to use.

7.08 SEVERABILITY

In the event any covenant, condition or provision contained in this Agreement 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 Agreement.

7.09 SECURITY

It is understood and agreed by the Government that in addition to the Government's responsibilities to maintain the Demised Premises as provided herein, it shall take reasonable security precautions to maintain the Demised Premises in a manner as to keep them secure from unauthorized intrusion and shall with respect to any area of the premises 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 (TSA) 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.

7.10 WAIVERS

No waiver of default by either party of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Government 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 Government or the City.

The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Government of any term, covenant or condition of this Agreement other than the failure of the Government 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.

7.11 GOVERNMENT BOOKS AND RECORDS

The Government agrees that the Auditor of the City or any of the Auditor's duly authorized representatives, until the expiration of three (3) years after the termination of this Agreement, shall have the right, at any reasonable time and at its own expense, to have access to and the right to examine any books, documents, papers and records of the Government pertinent to this Agreement.

7.12 CITY SMOKING POLICY

The Government and its officers, agents and employees shall cooperate and comply with the provisions of Denver Municipal Code 24-304 (1993) and Denver Executive Order No. 99 dated December 1, 1993, or any successor executive order prohibiting smoking in all indoor buildings and facilities. Government agrees that it will take reasonable actions to prohibit smoking by its employees and the public in the Demised Premises except in specially designated areas.

7.13 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

The Government and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 94 dated October 29, 2002, and Attachment A thereto, or any successor executive order concerning the use, possession or sale of alcohol or drugs.

7.14 THIRD PARTIES

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (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 Government because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained.

7.15 UNITED STATES DEPARTMENT OF TRANSPORTATION PROVISIONS

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Denver Airport System.

7.16 CITY NON-DISCRIMINATION

In connection with the performance of work under this Agreement, the Government 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 Government further agrees to insert the foregoing provision in all subcontracts hereunder.

7.17 ENTIRE AGREEMENT

The provisions contained in this Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter thereof, and 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 Agreement cannot be changed or terminated orally. No alterations, amendments, changes or modification, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by both parties hereto with the same formality as this Agreement.

7.18 CONDITION; FINAL APPROVAL

This Agreement 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 Government.

7.19 RESERVED

7.20 AMENDMENTS TO EXHIBITS AND APPENDICES

The parties acknowledge that the rights and obligations of each of them as set forth in this Agreement will extend over a period of years. The Exhibits and Appendices hereto are intended to set forth the parties' current understandings and expectations with respect to the intended Agreementhold interests and such understandings and expectations may change over time. Therefore, the Manager is expressly authorized to make adjustments to such exhibits and appendices from time to time to reflect agreed-upon changes, without affecting the underlying rights and obligations as set forth herein. Any such adjustments shall be evidenced in writing.

7.21 AGREEMENT DOCUMENTS; ORDER OF PRECEDENCE

This Agreement consists of Sections 1 through 7 that precede the signature page and the following attachments that are incorporated herein and made a part hereof by reference:

Appendix No. 1	Standard Federal Assurances
Exhibit A	Space Exhibit
Exhibit B	Rates and Charges

Together all such documents constitute and are referred to as the "Agreement."

In the event of (i) an irreconcilable conflict between a provision of Sections 1 through 7 and any of the listed attachments, such that it is impossible to give effect to both, or (ii) an irreconcilable conflict between provisions of any attachments, such that 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:

Appendix 1
Exhibit A
Exhibit B

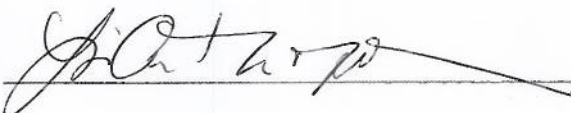
7.22 ENTIRE AGREEMENT; AMENDMENT

The parties acknowledge and agree that the provisions contained in this Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter thereof, and 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 Agreement cannot be changed or terminated orally. No alterations, amendments, changes or modification, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

7.23 FINAL APPROVAL

This Agreement 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 Government.

Contract Control Number: PLANE-201415620-00
Contractor Name: Colorado Air National Guard

By: 

Name: Lia Arthofer
(please print)

Title: MSgt, Contracting officer, COANG
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



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, and Title 14, CFR, Part 152, Subpart E, 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, national origin, or sex 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 Title 49, 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.

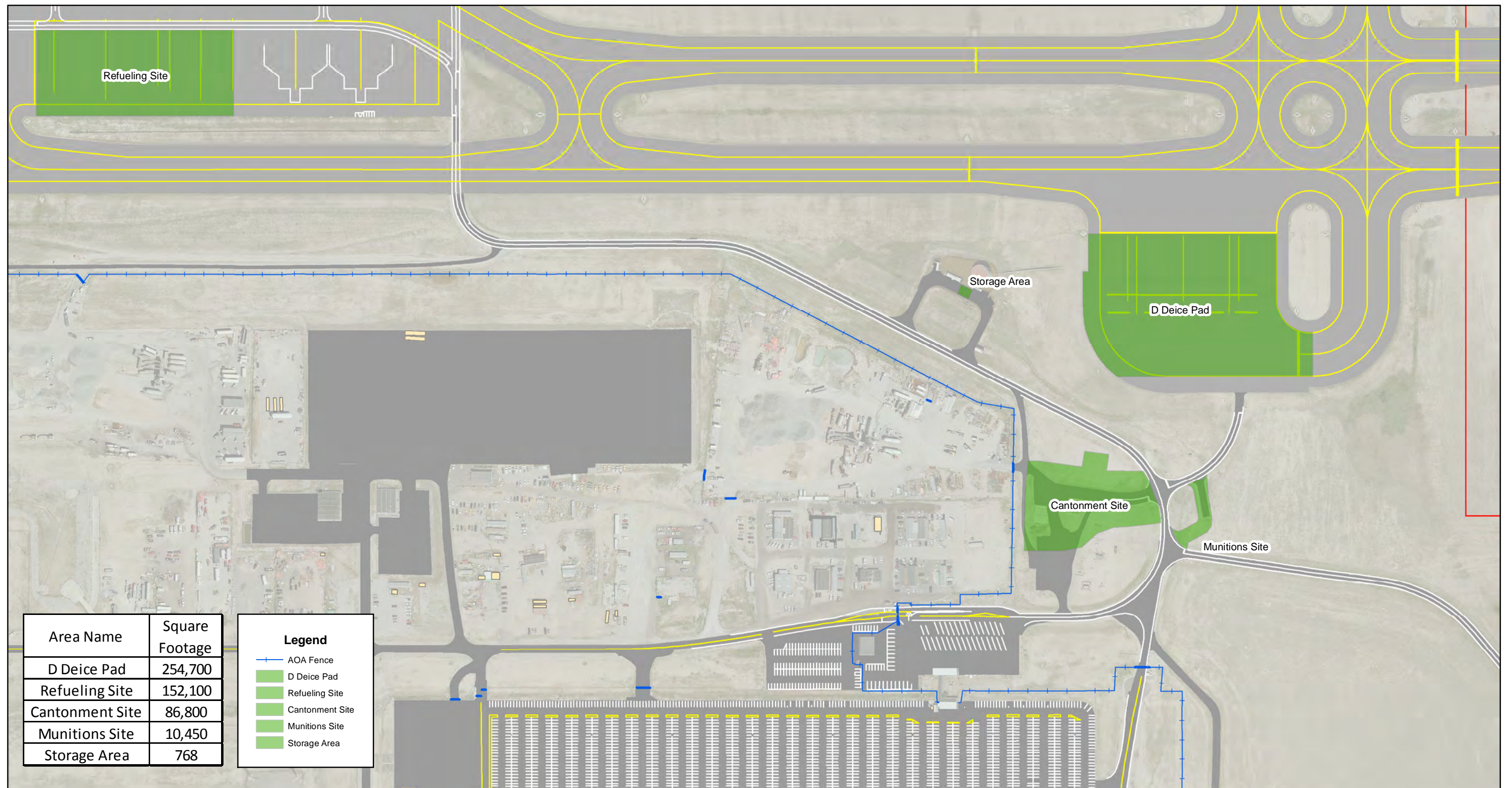
7. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in 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.



Date: 3/3/2014



Buckley Relocation Square Footage Exhibit

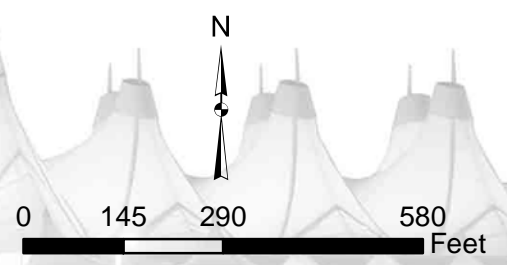


EXHIBIT B

Ground rent for the remaining spaces, as follows:

D Deice Pad: 254,700 sq. ft.

Refueling Site: 152,100 sq. ft

Cantonment Site: 86,800 sq. ft.

Munitions Site: 10,450 sq. ft.

Storage Area: 768 sq. ft.

This is a total of 504,818 sq. ft. City and County of Denver Department of Aviation ground rent is \$0.776 per sq. ft. per year. The rent per month totals \$32,645.