

**INTERGOVERNMENTAL AGREEMENT REGARDING OPERATIONS AND
MAINTENANCE OF PEÑA STATION AREA IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING OPERATIONS AND MAINTENANCE OF PEÑA STATION AREA IMPROVEMENTS (“Agreement”) is made and entered into the date of the City’s signature below to be effective upon the Effective Date (hereinafter defined), by and between the Aviation Station North Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (“Aviation No. 1”), and the City and County of Denver (the “City”) on behalf of the Department of Aviation (“DEN”) (the City and Aviation No. 1 may individually be referred to herein as a “Party” and collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS, City is the owner of certain real property located at approximately 61st Avenue and Peña Boulevard in Denver, Colorado (the “DEN Property”), which DEN Property is depicted on **Exhibit A** attached hereto and made a part hereof;

WHEREAS, Aviation No. 1 is a quasi-municipal corporation and political subdivision that has been formed to *inter alia* provide financing and public improvements to the taxpayers, residents and others within its service area;

WHEREAS, the service area of Aviation No. 1 is depicted on **Exhibit A** attached hereto and incorporated herein by reference and currently includes property owned by Rail Stop LLC, SMT, The Estate of Karl D. Smith and 61st Street Partners, LLLP (the “Aviation Property”);

WHEREAS, the DEN Property and the Aviation Property, comprise a multi-use development to be known as the “Peña Station Area”;

WHEREAS, Aviation No. 1’s service plan authorizes it to finance and construct public improvements, including, but not limited to, transportation, roads, parks, water, drainage and sanitary sewer service improvements;

WHEREAS, pursuant to Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-201, et. seq., Colorado Revised Statutes, the Parties may cooperate and contract with each other to provide any function, service or facility lawfully authorized by such governments;

WHEREAS, Aviation No. 1 and the City entered into that certain Intergovernmental Agreement Regarding Peña Station Area Improvements dated May 21, 2015 (the “Master IGA”);

WHEREAS, the Master IGA addressed the Parties respective obligations for the funding and construction of the Aviation Constructed Improvements (as defined in the Master IGA, which list is incorporated herein as **Exhibit B**);

WHEREAS, the Master IGA contemplated the Parties would enter into a separate intergovernmental agreement to address each Party’s respective obligations for the ownership, operation and maintenance of the Aviation Constructed Improvements;

WHEREAS, the responsibility for the operation and maintenance of certain of the Aviation Constructed Improvements will be shared by DEN and Aviation No. 1, which shared improvements are more fully detailed herein (the “Shared Improvements”);

WHEREAS, the Parties have also determined that as a result of the physical location and similar maintenance obligations associated with certain of the Aviation Constructed Improvements, the Parties have agreed that it would be in the best interests of DEN for DEN to engage Aviation No. 1 to perform maintenance services for certain of the Aviation Constructed Improvements for which DEN has 100% responsibility to own and maintain (the “Hired Improvements”), which Hired Improvements are more fully described herein;

WHEREAS, the Parties desire to enter into this agreement to establish each Party’s responsibility for the ownership, operation and maintenance of the Aviation Constructed Improvements, including the Shared Improvements and Hired Improvements and the funding thereof.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Acknowledgment and Incorporation of Recitals. The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement.

2. Term and Termination. This Agreement shall commence upon the date of the City’s signature hereto (the “Effective Date”) and shall continue for a period of five (5) year(s) (the “Initial Term”). On or prior to the expiration of the Initial Term, the Parties shall negotiate in good faith to an extension. If the negotiations are not finalized by the end of the Initial Term This Agreement Shall continue in good faith for 45 days. If after 45 days the Parties are unable to agree upon an extension, then from and after the date of expiration, DEN shall be solely responsible for all Shared Improvements located on its Property and Aviation No. 1 shall have no further liability or obligation with respect thereto.

Notwithstanding the foregoing, the Services (hereinafter defined) shall not commence for any Shared Improvement or Hired Improvement until the date specified in Sections 7 and 8 below for each specific Shared Improvement and Hired Improvement. Further, either DEN or Aviation No. 1 shall have the right to terminate the Services with respect to any Hired Improvement upon sixty (60) days prior written notice to the other Party.

3. Aviation Constructed Improvements. Attached hereto as **Exhibit B** is a list of the Aviation Constructed Improvements.

4. Ownership of Aviation Constructed Improvements. Upon completion of the Aviation Constructed Improvements, the Aviation Constructed Improvements shall be transferred to and owned by the entities as reflected on **Exhibit C** attached hereto and incorporated herein by reference (the “Ownership Matrix”). Each Party agrees to cooperate with the other, at no cost or

expense, to cause a transfer of those Aviation Constructed Improvements to the applicable entity, as shown on the Ownership Matrix, for ownership. References to the City and County of Denver General Fund Agencies shall be referred to herein and in the Ownership Matrix as “Denver.”

5. Costs and Authority to Operate and Maintain Aviation Constructed Improvements. For any Aviation Constructed Improvements not constituting a “Shared Improvement” as hereinafter defined, the entity that owns the same shall have the sole and absolute responsibility for the costs of operation and maintenance thereof.

6. Separate DEN Agreements. The Parties acknowledge that certain of the Aviation Constructed Improvements that are located on DEN Property, although owned by DEN, will be maintained separately by the City, Denver Water or Xcel. With respect to these Aviation Constructed Improvements, DEN shall or has entered into separate license and/or franchise agreements with the entity responsible for such operation and maintenance. Aviation No. 1 shall have no obligation or responsibility with respect to any Improvements located on DEN Property unless the same constitutes a Shared Improvement or a Hired Improvement.

7. Shared Improvements. Certain of the Aviation Constructed Improvements constitute “Shared Improvements” in which DEN, the City and Aviation No. 1 agree to contribute to the cost of the operation and maintenance of such Shared Improvement. It is acknowledged that certain other landowners within the Aviation Property may also contribute to the cost of operation and maintenance of such Shared Improvement, however, any such agreements shall be made pursuant to separate agreements between Aviation No. 1 and such landowners or other metropolitan districts within the Aviation Property. The following table lists the Shared Improvements, the entity that has the responsibility to operate and maintain the same and the cost-share percentage (the “Cost-Share Percentage”) to be paid by each Party:

| Shared Improvement | Entity to Maintain | Cost-Share Percentage | Commencement of Services | Scope of Work |
|-------------------------------------------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------------------------------|
| Blue Grama Open Space | Aviation No. 1 | Each Party shall bear its proportionate share of the cost of maintenance based on the amount of flows generated from the DEN Property and the Aviation Property as determined by a licensed engineer | Upon execution of this Agreement | See <u>Exhibit D-1</u> |
| Peña Station Plaza (other than fare equipment, which RTD will maintain) | Aviation No. 1 | Each party shall share the total cost of maintenance equally | Upon execution of this Agreement | See <u>Exhibit D-2</u> |

8. Hired Improvements. Certain of the Aviation Constructed Improvements constitute “Hired Improvements” for which DEN has the sole obligation for ownership, maintenance, repair, replacement and operation. Notwithstanding the foregoing, DEN and Aviation No. 1 recognize that with respect to the Hired Improvements, certain economies will be accomplished by Aviation No. 1 performing the maintenance of such Hired Improvements. The Parties acknowledge that additional Hired Improvements may be identified from time-to-time and, if the Parties agree, may be added to this Agreement by amendment to include an additional Scope of Work. Accordingly, DEN hereby hires and engages Aviation No. 1 to provide Services for the following initial Hired Improvements and DEN agrees to pay all actual and reasonable costs incurred by Aviation No. 1 in accordance with the terms and provisions hereinafter provided:

| Hired Improvement | Date of Commencement of Services | Scope of Work |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------|
| Aviation Place on DEN Property | Upon Completion of construction of Aviation Place | See <u>Exhibit E-1</u> |
| Landscaping and Sidewalks on Public Roads located within DEN Property which landscaping and sidewalks constitute an Aviation Constructed Improvement | Following warranty period provided by Hensel Phelps | See <u>Exhibit E-2</u> |
| Storm Drainage Pipe (inundated) located on DEN Property | Upon execution of this Agreement | See <u>Exhibit E-3</u> |
| Peña Station Parking Lot – parking field (including snow removal) and landscaping | Upon execution of this Agreement | See <u>Exhibit E-4</u> |

9. Services. Aviation No. 1 hereby agrees that with respect to both the Shared Improvements and the Hired Improvements, that it shall operate, maintain each of the Shared Improvements and Hired Improvements in a good and working order in compliance with all laws, rules, regulations and codes and pursuant to each scope of work attached hereto as **Exhibit D-1** through **Exhibit D-2** for the Shared Improvements and **Exhibit E-1** through **Exhibit E-4** for the Hired Improvements (each, a “Scope of Work”). Collectively, the Scopes of Work for each Shared Improvement and Hired Improvement are referred to herein as the “Services.” As provided above, the Services may be reduced, enlarged or terminated from time-to-time by execution of an amendment hereto either deleting a Scope of Work, modifying a Scope of Work or adding a new Scope of Work.

In performance of the Services, Aviation No. 1 hereby agrees:

- (a) To maintain or cause the contractors performing such Services to maintain insurance as set forth in Section 20 below; and
- (b) Not enter into any contract, oral or written, in the name of the DEN, and

not incur any debt, liability or obligation for or on behalf of DEN, unless consented to in writing by DEN. All obligations incurred by the Aviation No. 1 shall be obligations of the Aviation No. 1, and Aviation No. 1 shall hold DEN harmless therefrom.

10. No Right or Interest in DEN Assets. Aviation No. 1 shall have no right or interest in any of the DEN's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

11. Independent Contractor Status. Aviation No. 1 is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate Aviation No. 1 or any of its employees, agents, subcontractors or suppliers as employees of DEN. The Services to be performed by Aviation No. 1 shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to DEN, except the payments to be made by DEN to Aviation No. 1 for the Services performed with respect to the Shared Improvements and Hired Improvements as provided herein. DEN shall not be responsible for Aviation No. 1's means, methods, techniques, sequences or procedures of work or for safety precautions incident thereto.

12. DEN Inspection Right. DEN may review and inspect the Shared Improvements and Hired Improvements periodically. If DEN believes Aviation No. 1 is not providing adequate Services, DEN shall provide specific details of such deficiency (ies) to the Aviation No. 1 in writing ("Written Notification"). Aviation No. 1 will have thirty (30) days from the date of receipt of the Written Notification in which to address the deficiency (ies) set forth in the Written Notification (the "Cure Period"). If Aviation No. 1 fails to address the deficiency (ies) within the Cure Period, DEN shall have the remedies set forth in Section 17, below.

13. No Modification to Shared Improvements. For any Shared Improvements neither party shall modify such Shared Improvements if such modification would increase the Actual Expenses (hereinafter defined) hereunder or increase either Party's obligations hereunder unless mutually agreed to in writing by the Parties.

14. Subcontractors. With respect to the Services, Aviation No. 1 shall obtain and shall cause its subcontractors to maintain in full force and effect all required licenses, permits and bonds, and comply with all applicable laws. Aviation No. 1 shall ensure that each subcontractor obtains and provides to DEN evidence of insurance as required hereunder. Upon written request by the DEN, Aviation No. 1 shall use commercially reasonable efforts to obtain and provide to DEN mechanic's lien waivers from all of its contractors, subcontractors and materials suppliers, confirming that all work performed and all materials supplied with respect to or on account of Aviation No. 1's activities on or about the Shared Improvements or Hired Improvements located on DEN Property have been paid in full.

15. License. DEN agrees to grant Aviation No. 1 a license(s), in a form or forms mutually agreed to by the Parties, to enter upon, use, operate and maintain the Shared Improvements and Hired Improvements located on DEN Property.

16. Compensation.

(a) DEN shall pay Aviation No. 1 for all of Aviation No. 1's actual and reasonable costs incurred in performing the Services hereunder. Prior to commencement of any Services pursuant to a particular Scope of Work, the Parties shall agree upon the compensation payable for such Scope of Work either on a time and materials basis or other reasonable method and which compensation may include, but not be limited to, amounts for: maintenance, water and water metering expenses, snow removal, insurance, electricity, minor replacements, and the Administration Fee, as defined below (collectively, the "Projected Expenses") (for each Scope of Work, an "Initial Budget"). Such Projected Expenses shall separately identify any material replacement in addition to ordinary maintenance and repair. Aviation No. 1 shall provide the Initial Budget for the next calendar year to DEN no later than May 1 annually. DEN shall have thirty (30) days following receipt of an Initial Budget to review and approve in writing the same. In the event that the estimate of the Initial Budget increases more than ten (10) percent after approval by DEN, Aviation No. 1 shall provide an amended budget ("Amended Budget") to DEN. DEN shall have thirty (30) days after receipt of the Amended Budget to review and approve in writing the same. Aviation No. 1 agrees that any services contracts entered into by Aviation No. 1 to perform the Services shall be on commercially reasonable terms. If DEN rejects an Initial Budget for any particular Scope of Work, Aviation No. 1 and DEN shall attempt to resolve the same pursuant to the process contained in Section 18 below. If after such Dispute Resolution process the Parties are still unable to agree upon the same, then either Party shall have the right to terminate the applicable Scope of Work. Notwithstanding the foregoing, if the Scope of Work for which the Parties are unable to agree is for a Shared Improvement, then in addition to terminating the applicable Scope of Work for the Shared Improvement, Aviation No. 1 shall also have the right to terminate all Scopes of Work hereunder. Following such termination of all Scopes of Work: (i) with respect to the Hired Improvements, Aviation No. 1 shall have no further liability and DEN shall be solely responsible for the same; and (ii) with respect to the Shared Improvements: (A) Aviation No. 1 shall have responsibility for that portion of the Blue Grama Open Space located on the Aviation Property and DEN shall have responsibility for that portion of the Blue Grama Open Space located on the DEN Property; and (B) DEN shall have sole responsibility for the Peña Station Plaza.

(b) Maximum Contract Liability. Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Aviation No. 1 under the terms of this Agreement for any amount in excess of the sum of eight hundred thousand dollars (\$800,000.00) ("Maximum Contract Liability") per annual budget.

(c) Share of Expenses. Aviation No. 1 shall use commercially good faith

efforts to perform the Services in accordance with each Initial Budget. Notwithstanding the foregoing, DEN shall be responsible to pay to Aviation No. 1, DEN's Cost Share Percentage of all actual expenses incurred by Aviation No. 1 in performance of the Services during each applicable calendar year (the "Actual Expenses"),. Aviation No. 1 and DEN shall reconcile such Actual Expenses in accordance with the reconciliation procedure set forth in subsection (e) below.

(d) Administration Fee. DEN hereby agrees that in addition to the Actual Expenses, Aviation No. 1 shall be entitled to an administration fee ("Administration Fee") payable at the same time as the Quarterly Payments, which Administration Fee shall be in the amount of five percent (5%) of all Actual Expenses incurred.

(e) Pledge of Revenue. DEN shall cause, annually, to be submitted in its budget for appropriation such funds as are necessary to satisfy DEN's share of Projected Expenses as reflected on each Initial Budget.

(f) Quarterly Payments/Reconciliation. Commencing on the date of the first calendar quarter following the commencement of Services for either a Hired Improvement or Shared Improvement, DEN shall remit to the Aviation No. 1, DEN's Share of the Projected Expenses based upon the approved Initial Budget (the "Quarterly Payment"). The Parties agree that within one hundred twenty (120) days following each calendar year during the Term hereof, Aviation No. 1 shall determine DEN's share and provide a reconciliation thereof based upon all Actual Expenses incurred hereunder for the prior calendar year, together with invoices and all supporting documentation for costs from all contractors and sub-contractors. If DEN's share is less than the Quarterly Payments made by DEN for said calendar year, Aviation No. 1 shall remit such excess to DEN within thirty (30) days following written request therefor (. If DEN's Share is greater than DEN's Quarterly Payments for said year (a "Deficiency"), then DEN shall, within forty-five (45) days following receipt of the reconciliation, pay to Aviation No. 1 the amount of such Deficiency.

(g) Maintenance of Books of Account. It shall be the duty and the responsibility of Aviation No. 1 to establish and maintain in accordance with generally accepted accounting principles, consistently applied, accurate and complete books of account with proper entries of all receipts, payments and disbursements related to the Services for the Shared and Hired Improvements, all of which shall be available to DEN and its representatives for inspection at any time during regular business hours.

(h) Expenses. Other than the Administration Fee, Aviation No. 1 shall be responsible for its overhead and general administrative expenses and shall not be entitled to any reimbursement or compensation for the same except as set forth in this Section unless otherwise approved in advance by DEN in writing.

17. Default/Self-Help Remedy. In the event Aviation No. 1 defaults in providing the Services hereunder, and such default continues for more than thirty (30) days following written notice of DEN to Aviation No. 1 of the same, DEN shall have the right to perform the same. Notwithstanding the foregoing, in the event such default results in an immediately public safety or property damage threat, then no prior notice shall be required. If DEN performs any such Services, Aviation No. 1 shall be responsible for its share of the actual third-party out of pocket expenses attributable to the Shared Improvements, as applicable, incurred by DEN, and shall pay the same to DEN within thirty (30) days following receipt of an invoice therefor (along with reasonable proof of such payment and lien waivers). In addition, in the event either Party defaults hereunder and such default remains uncured for a period of thirty (30) days or more following written notice thereof, the non-defaulting Party shall have all remedies available to it at law or in equity, as limited herein, including but not limited to specific performance and actual damages. No Party hereto shall be entitled to consequential or punitive damages hereunder. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be awarded as part of its judgment or award its reasonable attorneys' fees.

18. Dispute Resolution. Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5 17. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to a right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

19. Representations. Both Aviation No. 1 and DEN hereby represent they have sufficient funds available and have or will appropriate funds for the purposes of satisfying their obligations hereunder.

20. Insurance. Aviation No. 1 shall maintain appropriate insurance limits and coverage related to the provision of Services as set forth in **Exhibit F**, attached hereto and incorporated herein by this reference, and Aviation No. 1 shall also require all service contractors to meet the same minimum insurance requirements. Aviation No. 1 will add DEN and the City as an additional insured on its insurance policy for these purposes, and will require all service contractors for the Services to do the same. Any increase in the limits provided in the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., shall trigger an automatic increase in the insurance limits set out in **Exhibit F** so that the minimum insurance coverage provided to DEN and the City shall not be less than the maximum amount to be recovered for any single occurrence.

21. Certification of Compliance with Illegal Alien Statute. By its execution hereof, Aviation No. 1 confirms that it requires all contractors providing Services for the Shared Improvements and Hired Improvements to comply with the provisions of C.R.S. § 8-17.5102(1), and to certify that such contractor does not knowingly employ or contract with an illegal alien who will perform the Services, and that said contractor will participate in the E-Verify Program or Department Program (as defined in C.R.S. §§ 8-17.5-101(3.3) and (3.7)) in order to confirm the employment eligibility of all employees who are newly hired to perform the Services.

22. M/WBE and Prevailing Wage Compliance. Aviation No. 1 hereby confirms that in its performance of the Services, Aviation No. 1 will comply with all M/WBE program requirements and prevailing wage requirements of the City.

23. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

Aviation No. 1: Aviation Station North Metropolitan District No. 1
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado
Attn: Lisa Johnson

With a Copy to: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Attention: MaryAnn McGeady

DEN: Chief Executive Officer, Department of Aviation
Denver International Airport
Airport Office Building, 9th
Floor 8500 Peña Blvd.
Denver, Colorado 80249-6340

With Copies to: General Counsel, Airport Legal Services
Denver International Airport
Airport Office Building, 9th
Floor 8500 Peña Blvd.
Denver, Colorado 80249-6340

SVP, DEN Real Estate
Denver International Airport
Airport Office Building, 9th
Floor 8500 Peña Blvd.
Denver, Colorado 80249-6340

SVP - Airport Infrastructure Management
Denver International Airport Airport
Office Building 8500 Peña Blvd.
Denver, Colorado 80249-6340

Program Manager
Denver International Airport
Office Building, 9th Floor 8500 Peña
Blvd.
Denver, Colorado 80249-6340

Denver: Executive Director of Public Works
201 W. Colfax Ave., Dept. 608
Denver, Colorado 80202

With Copies to: Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street Room 353
Denver, Colorado 80202

24. Appropriation. Pursuant to Section 29-1-110, C.R.S., any financial obligations of Aviation No. 1 and DEN contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis. The financial participation of DEN and the City provided in this Agreement shall derive solely from the enterprise funds controlled by DEN and not from the General Fund or any other funds of the City.

25. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

26. Colorado Law. The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, City and County of Denver, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

27. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

28. No Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

29. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

30. Amendments. This Agreement may be amended, in whole or in part, only by written instrument executed by the Parties.

31. Non-Discrimination. In connection with the performance of work under this agreement, Aviation No. 1 agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and Aviation No. 1 further agrees to insert the foregoing provision in all subcontracts hereunder.

32. Books and Accounting. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Parties, involving transactions related to the Agreement until the latter of three (3) years after expiration of the applicable statute of limitations.

33. Use, Possession, or Sale of Alcohol or Drugs. Aviation No. 1, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Aviation No. 1 from City facilities or participating in City operations.

34. City Smoking Policy. Aviation No. 1 acknowledges that smoking is not permitted in airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of DEN Property, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Tobacco products for sale to the public shall only be stored/held in a controlled 'behind the scene' location not readily visible to customers and advertising shall be restricted to a small single 'tombstone' sign (1 to 2 inch black lettering on a 5 by 8 inch white background) located within concession premises saying "Tobacco Products Available". Aviation No. 1 and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 *et seq.*, the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

35. Agreements Subordinate to Agreements with United States. 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 development of the Airport or airport system. The provisions of the attached Appendices are incorporated herein by reference.

36. Bond Ordinances. 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 any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Aviation No. 1 agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal

Revenue Code of 1986, as amended. In particular, Aviation No. 1 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 DEN Property subject to this Agreement 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.

37. Indemnification. Aviation No. 1 agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Aviation No. 1 or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

Aviation No. 1’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Aviation No. 1’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

Aviation No. 1 will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Aviation No. 1 under the terms of this indemnification obligation. Aviation No. 1 shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

38. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one of the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by any Party hereto. This Agreement and any other documents requiring a signature may be signed electronically by each Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of this Agreement 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 this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper

copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

39. Consent by DEN and Denver. Where consent, waiver, approval, extension, notice or other action by DEN or the City is contemplated hereunder, such may be provided by the CEO of the Department of Aviation or her/his designee, provided, however, that any default notice or termination of this Agreement by the City must be provided by the Mayor of the City. Further, to the extent that a matter affects Denver, the Manager of the affected general fund department(s) shall provide the applicable consent, waiver, approval, extension, notice or other action on behalf of Denver in addition to the action of the CEO.

40. Intent of Agreement. The main purpose of this agreement is to provide for the operation and maintenance of Shared Improvements and Hired Improvements between the Aviation No. 1 and DEN. The Ownership Matrix shows ownership and maintenance for certain items including streets, sewer lines and drainage facilities for Denver. This is meant to show that streets and other facilities will be constructed, inspected and accepted in accordance with Public Works procedures and standards of Denver. Nothing in this Agreement is intended to enter into any type of relationship or payment of funds with regard to such facilities by Denver other than normal Denver practice for such facilities. There will be certain Wi-Fi and Smart City facilities in which Denver will participate in such costs for construction and maintenance of such facilities along with DEN and Aviation No. 1. Such facilities at the Peña Station Area shall be subject to a separate agreement to be entered into by Aviation No. 1, DEN and Denver.

[SIGNATURE PAGES FOLLOW]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

**AVIATION STATION NORTH
METROPOLITAN DISTRICT NO. 1**

By:


Ferdinand Belz III, President

Attest:



Secretary



EXHIBIT LIST

| | |
|-------------|-----------------------------------------------------------|
| Exhibit A | Peña Station Area Map |
| Exhibit B | Aviation Constructed Improvements |
| Exhibit C | Ownership Maintenance Matrix |
| Exhibit D-1 | Scope of Work – Blue Grama Open Space |
| Exhibit D-2 | Scope of Work – Peña Station Plaza |
| Exhibit E-1 | Scope of Work – Aviation Place on DEN Property |
| Exhibit E-2 | Scope of Work – Landscaping and Sidewalks on Public Roads |
| Exhibit E-3 | Scope of Work – Storm Drainage Pipe |
| Exhibit E-4 | Scope of Work – Peña Station Parking Lot |
| Exhibit F | Insurance Requirements |

EXHIBIT A

Peña Station Area (including DEN Property, Developer Property, SMT Property and Smith Property)

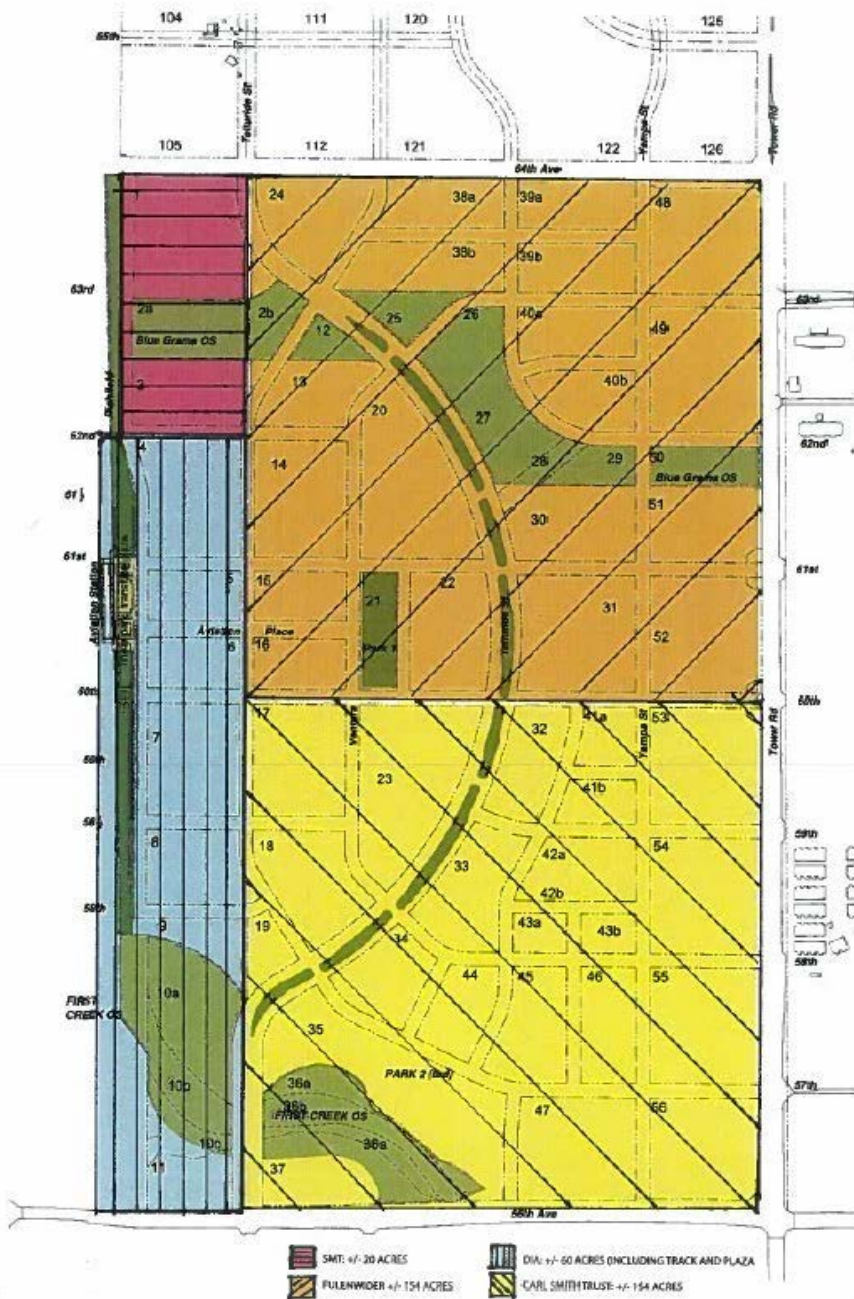


EXHIBIT A – PENA STATION AREA

EXHIBIT B

Aviation Constructed Improvements

- A drop off, ticketing, waiting area and plaza adjacent to the RTD commuter rail station platform;
- All landscaping, ticketing devices, signage, project art, security cameras, lighting, and other appurtenances and amenities associated with the drop off, ticketing, waiting area, and plaza;
- An 800 space hard surface parking lot serving the RTD station and surrounding station area including all parking control; security; and landscaping as necessary to serve to the parking lot;
- All wet and dry utilities and water quality management required to serve the RTD commuter rail station platform; the drop off, ticketing, waiting, and plaza area; and the parking lot.
- A sanitary sewer lift station and a pressurized sanitary sewer line to allow sewer flows to be pumped from the station area to adjacent City sanitary lines;
- A gravity fed sanitary sewer collection lines and main flow lines to serve the station area;
- 60th Avenue road improvements from back of curb to back of curb from Tower Road west to Richfield;
- 61st Avenue road improvements from Tower Road west to Richfield Street;
- Improvements to Tower Road at 60th and 61st Avenues including a traffic light at 61st Avenue;
- Salida Street road improvements from 61st Avenue to Blue Grama Gulch;
- Ventura Street road improvements from 60th Avenue to Blue Grama Gulch;
- Richfield Street road improvements from 60th Avenue to the parking lot entrance north of 61st Avenue;
- Potable water lines in all road sections with connections to the City water system as appropriate;
- A non-potable water system designed to provide service to all major open space areas, to be connected to the City non-potable water system when available;
- Storm water collection mains in all road sections with connections to the Blue Grama regional water quality management areas and storm water channel;
- Some portion of the Blue Grama water quality management area and storm water channel;
- Some portion of Aviation Park;
- Electronic signage devices placed in the plaza, Aviation park, and certain areas behind curb in the station area;
- An entry monument at 61st Avenue;
- Conduit to accommodate such devices and provide communication capacity to wi-fi and security devices throughout the station area;

- All first phase project art;
- Relocation of a liquids pipeline to eliminate interference with project infrastructure;

All financing; legal; engineering; surveying; materials testing; project management; construction management costs applicable for the project plus a project contingency amount.

EXHIBIT C

Ownership Maintenance Matrix

| | | | | | |
|----------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------|---------------------------------------|----------------------------------------------|--------------------------------------|
| Operations and Maintenance Agreement | | | | | |
| City of Denver/Aviation Station Metro District #1/DEN/SMT Districts/Panasonic/Adjacent Landowners | | | | | |
| 1/18/2017 | | | | | |
| | | | | | |
| | | | | | |
| Description | Party which Constructs | Party which Owns | Party that performs O & M* | Parties that share in O & M Costs | Agreement Governing O & M |
| Public Roads, Outside of curb to outside of curb | | | | | |
| 60th from Tower to DEN Property Line | Aviation #1 | Denver | Denver | Denver | O & M IGA |
| 60th on DEN property | Aviation #1 | DEN | Denver | Denver | City/DEN License |
| 61st from Tower to DEN Property Line | Aviation #1 | Denver | Denver | Denver | O & M IGA |
| 61st on DEN property | Aviation #1 | DEN | Denver | Denver | City/DEN License |
| East half of Panasonic Way | Aviation #1 | Denver | Denver | Denver | O & M IGA |
| West half of Panasonic Way | Aviation #1 | DEN | Denver | Denver | City/DEN License |
| Richfield | Aviation #1 | DEN | Denver | Denver | City/DEN License |
| Salida | Aviation #1 | Denver | Denver | Denver | O & M IGA |
| Future Public Roads on private property | Aviation #1 | Denver | Denver | Denver | O & M IGA |
| Future Public Roads on DEN property | Aviation #1 | DEN | Denver | Denver | City/DEN License |
| Private Roads, Outside of curb to outside of curb | | | | | |
| Aviation Place on LCF property | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | None |
| Aviation Place on DEN property | TBD | DEN | Aviation #1 | DEN | O & M IGA |
| Public Roads, Landscaping and Sidewalks in ROW | | | | | |
| On Developed LCF property | Aviation #1 | Denver | Adjacent Land Owner | Adjacent Land Owner | Purchase Contract |

| | | | | | |
|-----------------------------------------------|-------------|--------------|--------------|--------------|------------------|
| On Undeveloped LCF property | Aviation #1 | Denver | Aviation #1 | Aviation #1 | None |
| On Developed DEN property | Aviation #1 | DEN | DEN | DEN | None |
| On Undeveloped DEN property | TBD | DEN | Aviation #1 | DEN | O & M IGA |
| | | | | | |
| Traffic Signals | Aviation #1 | Denver | Denver | Denver | None |
| | | | | | |
| LED and/or Smart Street Lights | Aviation #1 | Denver | Denver | Denver | None |
| | | | | | |
| Water Systems (Potable and Nonpotable) | | | | | |
| On LCF property | Aviation #1 | Denver Water | Denver Water | Denver Water | None |
| On DEN property | Aviation #1 | Denver Water | Denver Water | Denver Water | D.W./DEN Agmt. |
| | | | | | |
| Sewer Systems | | | | | |
| On LCF property | Aviation #1 | Denver | Denver | Denver | None |
| On DIA property | Aviation #1 | Denver | Denver | Denver | City/DEN license |
| Sewer Lift Station and Force Main | Aviation #1 | Denver | Denver | Denver | None |
| | | | | | |
| Storm Drainage Pipe** | | | | | |
| On LCF property (Non-inundated) | Aviation #1 | Denver | Denver | Denver | None |
| On LCF property (Inundated) | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | None |
| On DIA property (Non-inundated) | Aviation #1 | DEN | Denver | Denver | City/DIA License |
| On DEN property (Inundated) | Aviation #1 | DEN | Aviation #1 | DEN | PNEE |
| In public ROW (Non-inundated) | Aviation #1 | Denver | Denver | Denver | None |
| In public ROW (Inundated) | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | None |
| | | | | | |
| Blue Grama Storm Water Facilities | | | | | |

| | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|--------------|----------------|---------------------|---------------------|
| Low-flow channel | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | PNEE |
| Inundation Area | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | PNEE |
| Water Quality Ponds on LCF and SMT south Property | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1/SMT IGA |
| Water Quality Ponds on SMT North Property | SMT District | SMT District | SMT District | SMT | PNEE |
| | | | | | |
| Parks and Open Space | | | | | |
| Aviation Park | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 | O & M IGA |
| | | | | | |
| Station Plaza | Aviation #1 | DEN | Aviation #1 | Aviation #1 and DEN | O & M IGA |
| Ticket Vending and Security | RTD | RTD | RTD | RTD | DEN/RTD |
| Station Platform | RTD | RTD | RTD | RTD | None |
| Bike Path and Open space west of Richfield | TBD | DEN | TBD | TBD | TBD |
| | | | | | |
| Blue Grama Open Space | Aviation #1 | Aviation #1 | Aviation #1 | Aviation #1 and DEN | O & M IGA |
| | | | | | |
| Station Parking Lot | | | | | |
| Parking Field (including snow removal) | Aviation #1 | DEN | Aviation #1 | DEN | O & M IGA |
| Landscaping | Aviation #1 | DEN | Aviation #1 | DEN | O & M IGA |
| Ticket Vending | Aviation #1 | DEN | DEN | DEN | None |
| Canopy Structures | Aviation #1 | DEN | DEN | DEN | O & M IGA |
| PV System | Xcel/Panasonic | Xcel | Xcel/Panasonic | Xcel/Panasonic | Xcel/Panasonic |
| | | | | | |
| Dry Utilities | | | | | |
| Electric | Xcel | Xcel | Xcel | Xcel | None |
| Gas | Xcel | Xcel | Xcel | Xcel | None |
| | | | | | |
| *Any responsibility that Denver may have with regard to operation and maintenance of any facilities enumerated herein shall not begin until such time that Denver accepts such facilities for maintenance in accordance with usual procedures and standards as may be set forth in applicable Denver ordinances, rules and regulations and policies and procedures. | | | | | |
| **The delineation of private vs. public storm facilities are shown in the Sanitary and/or Storm Site Project ("SSPR") plans. | | | | | |

EXHIBIT D-1

Scope of Work – Blue Grama Open Space

Remove excess dirt and debris from the water quality ponds including inlet structures, trickle channels, outlet structures, pond area, and overflow spillways.

Mow the water quality ponds, Blue Grama storm water channel and open space areas adjacent to the channel.

Remove excess dirt and debris from the storm water channel.

Maintain the Blue Grama access roads to allow motorized vehicle access to the channel under normal weather conditions. The access path will not be routinely plowed to remove snow.

EXHIBIT D-2

Scope of Work – Peña Station Plaza

The plaza is defined as the area immediately adjacent to the 61st and Peña Rail Platform extending from the east edge of the platform and crossovers to the back of curb along the west edge of Richfield Street. The east edge of the platform is delineated by a decorative fence, the west ramp walls, and the landing areas east of the crossing gates at both ends of the platform.

Remove snow and ice and put down chemical retardant, all in accordance with the RTD operating standards for snow removal.

Water all landscaping in accordance with recommendations from the installer or the District.

Mow, weed, or otherwise maintain the landscaping on the plaza in accordance with the recommendations of the installer or the District.

Replace dead landscaping as needed.

Inspect, clean, and maintain, as needed the hardscape elements of the plaza including the bus stop, the concrete walking surfaces, the stone walls and stone seating areas, tree grates and tree wells, and the bike path.

EXHIBIT E-1

Scope of Work – Aviation Place on DEN Property

To be determined at such time as Aviation Place is constructed.

EXHIBIT E-2

Scope of Work – Landscaping and Sidewalks on Public Roads

The landscaping and sidewalks are described as the area from the back of curb to the back of sidewalk which is located in the street section which would typically be considered as right of way for any street which serves as a public roadway in the Peña Station area which is adjacent to land owned by DEN.

Remove snow and ice in accordance with the City of Denver operating standards for snow removal.

Water all landscaping in accordance with recommendations from the installer or the District.

Mow, weed, or otherwise maintain the landscaping in accordance with the recommendations of the installer or the District.

Replace dead landscaping as needed.

Inspect, clean, and maintain as needed the sidewalk, trash cans, benches, or other hardscape elements located in the tree lawn area of the street right of way. This specifically excludes any maintenance or operation of any street lights, Wi-Fi equipment, and utility or telecommunications boxes located in the tree lawn area.

EXHIBIT E-3

Scope of Work – Storm Drainage Pipe

The subject area is described as storm water piping upstream of storm water ponds in the Peña Station area which is located on DEN property and which has been identified in the approved design of the storm water piping system as being subject to inundation under certain high volume flow conditions.

Remove excess dirt and debris from the storm water system from time to time as requested by the City or the District.

Maintain the storm water line access road located on DEN property to allow motorized vehicle access to the manholes and storm water system under normal weather conditions. The access path will not be routinely plowed to remove snow.

EXHIBIT E-4

Scope of Work – Peña Station Parking Lot

The parking area is defined as the 800 space surface parking lot located on DEN property north of Richfield Street and 61st Avenue and west of Panasonic Way. This includes any landscaping adjacent to the parking lot between the curb edge of the parking lot and the back of sidewalk. This includes the sidewalk located on the west edge of the parking lot and any connections between the sidewalk and parking lot. This includes the parking canopy structure foundations and steel frame.

This scope of work specifically excludes the photovoltaic panels and wiring that serve as “roof” of the parking canopy and any equipment, wiring, or equipment enclosures associated with the photovoltaic system operations; the electric car charging stations; the parking lot revenue systems; all subsurface conduit, wiring, or communications equipment; and the parking lot signage.

Remove snow and ice and put down chemical retardant, all in accordance with the DEN operating standards for snow removal.

Water all landscaping in accordance with recommendations from the installer or the District.

Mow, weed, or otherwise maintain the landscaping on the plaza in accordance with the recommendations of the installer or the District.

Replace dead landscaping as needed.

Inspect, clean, and maintain as needed the hardscape elements of the landscaping or parking lot including the canopy, parking surface, striping, handicap ramps, and sidewalks.

EXHIBIT F

Insurance Requirements

1. **Insurance Requirements.** Aviation No. 1 shall procure, and shall cause any service contractors to procure, the insurance coverages set forth below, which insurance shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company.

(a) **Liability Insurance Coverage.**

(i) **Workers’ Compensation Insurance.** Aviation No. 1 shall cause its service contractors to provide a Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to Aviation No. 1 and in an amount not less than the statutory benefits, including Employer’s Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee; and (iii) \$500,000 aggregate liability for disease. The Workers’ Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of Aviation No. 1.

(ii) **Commercial General Liability Insurance.** A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to Aviation No. 1, which policy shall include, without limitation, Aviation No. 1 and DEN as additional insureds, a waiver of subrogation endorsement in favor of Aviation No. 1 and DEN, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the insurance policy or policies is primary and non-contributing with any other insurance maintained by or available to Aviation No. 1, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage Liability; Contractual Liability supporting the service contractor’s indemnification agreements in favor of Aviation No. 1 and DEN; Completed Operations and Products Liability; and Independent Contractor’s Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability.

(iii) **Automobile Liability Insurance.** An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to Aviation No. 1. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and nonowned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each accident for bodily injury and/or property damage.

(iv) **Excess Liability Insurance.** An Excess Liability Insurance Policy

written in excess of the coverages provided by the insurance policies described in the preceding sections in form and substance reasonably acceptable to Aviation No. 1, which policy will include Aviation No. 1 and DEN as additional insureds. The Excess Liability Insurance Policy must be written with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury/or property damage and annual aggregate.