

FUEL SYSTEM LEASE AGREEMENT

THIS FUEL SYSTEM LEASE AGREEMENT (the "**Lease**") is made and entered into as of the date stated on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city organized and existing under the Constitution and laws of the State of Colorado (the "**City**"), through and on behalf of its **DEPARTMENT OF AVIATION** ("**DEN**" or the "**Airport**"), and **DEN FUEL COMPANY, LLC**, a Colorado limited liability company (the "**Lessee**").

WITNESSETH

WHEREAS, the City owns certain fuel facilities at the Airport consisting of infrastructure collectively defined below as the "**Fuel System**"; and

WHEREAS, the Lessee desires to lease the Fuel System, as defined below, and certain portions of DEN property referred to herein as the "**Ground**" (**Fuel System** and **Ground** collectively referred to herein as the "**Lease Premises**") in accordance with this Lease, which, among other matters, provides for the payment of rentals, rates, fees, and charges, as described herein;

NOW, THEREFORE, for and in consideration of the respective representations and agreements contained herein, the City and Lessee do hereby mutually undertake, promise and agree as follows:

ARTICLE I: CONSIDERATION; DEFINITIONS; INTERPRETATION; DISPUTES

1.01 Consideration.

The City enters into this Lease in consideration of the payment by Lessee as herein provided, and of the performance and observance by Lessee of the covenants and agreements herein.

1.02 Definitions.

The following terms and phrases shall have the meanings stated for purposes of this Lease:

- A. "**Air Carrier**" means any "air carrier" or "foreign air carrier," as such terms are defined in 49 U.S.C. § 40102(a), and which carrier is operating at the Airport.
- B. "**Airport**" or "**DEN**" means Denver International Airport, located in the northeast portion of the City and County of Denver, State of Colorado, United States of America.
- C. "**Avgas**" means gasoline-based aircraft aviation fuel meeting the specification of ASTM D910 (latest revision) or any other quality specifications established by the Lessee from time to time.
- D. "**Avgas Service Provider**" means any Person that (i) executes an Avgas System Access Agreement; and (ii) obtains all necessary approvals and permits from the City to perform into-plane Avgas fueling services for Users at the Airport.
- E. "**Avgas System**" means, collectively, the elements of the receipt, storage transmission, delivery and dispensing systems and related facilities and appendages, as described in

Exhibit A attached hereto and incorporated by this reference, operated by Lessee pursuant to this Lease for the receipt, storage and distribution of Avgas related to the servicing of aircraft.

- F. **"Avgas System Access Agreement"** means a written agreement between the Lessee and a Person to allow certain defined privileges and limited access to the Avgas System by the Person for the purposes of providing Avgas services to Users.
- G. **"Aviation Fuel"** means fuel which meets the specifications of ATSM D1655 including its latest revision, and meets any other quality specifications established by Lessee from time to time.
- H. **"Capital Improvement Costs"** means all past, present, or future capital expenditures to improve the Fuel System including, but not limited to: actual construction costs; architectural and engineering fees; program management fees; testing costs (including any fuel and Gasoline required for such testing); inspection fees; construction management fees; permit fees and other direct or allocable fees; interest during construction; allocable out-of-pocket financing costs; reasonable attorneys' fees; normal financial advisors' fees; usual and customary costs associated with the issuance of bonds and all other costs directly attributable to the cost of designing, constructing and financing the Fuel System, or removal or decommissioning of Fuel System components less any grants-in-aid or similar amounts used in financing the improvements
- I. **"CEO"** means the Chief Executive Officer of Denver International Airport, sometimes referred to in the Denver Revised Charter, the D.R.M.C., or other City documents as the "Manager of Aviation," or such CEO's successors in function having jurisdiction over the management, operation, and control of the Airport.
- J. **"City Cost Recovery Charge"** has the meaning set forth in Section 5.01.A.3.
- K. **"City Fuel System Costs"** means any costs incurred by the City that are attributable to the Fuel System Cost Center, including without limitation direct and indirect costs, City in-house costs (including City employees' time attributable to the administration and management of the Fuel System), consulting and engineering fees, attorneys' fees, insurance and premium costs, insurance deductibles and self-retention for property insurance, operation and maintenance costs, repair and construction costs, costs incurred in connection with capital improvements, the demolition, removal or decommissioning of any portion of the Fuel System, security expenses, entry and inspection costs, costs arising from Lessee's failure to perform any obligations under this Lease, costs related to the Environmental Claim, of any Environmental Condition and any other costs incurred by the City to comply with Environmental Laws.
- L. **"Claim"** has the meaning set forth in Section 8.02(d).
- M. **"Contracting Airline"** means as the term is defined in the Interline Agreement.
- N. **"DEN Design Standards"** means the design standards and criteria for Denver International Airport, including as they may be amended or substituted. The DEN Design Standards current as of the date of execution of this Lease can be found at <http://business.flydenver.com/bizops/bizRequirements.asp>

- O. **“DEN Environmental Guidelines”** means DEN Rule 180 – Environmental Management, and the environmental compliance guidelines adopted by the Department of Aviation and that are available at www.flydenver.com/environmental or upon request at the DEN Environmental Services Office, which office may charge a reasonable fee for copies.
- P. **“DEN Tenant Development Guidelines” or “TDGs”** means the development guidelines and criteria established at DEN for tenants and companies for design, construction, installation, signage, and related matters, as currently in force or hereafter promulgated or amended. The TDGs current as of the date of execution of this Lease can be found at:
<http://business.flydenver.com/bizops/proprfp.asp>
<http://business.flydenver.com/bizops/documents/tenantManual.pdf>
<http://business.flydenver.com/bizops/documents/ssiForDENtenants.pdf>
- Q. **“D.R.M.C.”** means the Denver Revised Municipal Code, including as it may be amended.
- R. **“Environmental Audit”** means a comprehensive evaluation of the environmental compliance of the Fuel System performed by an Environmental Professional with specific knowledge of aviation fueling operations, applicable Environmental Laws, and Industry Standards.
- S. **“Environmental Claim”** means any demand, cause of action, proceeding, or suit for damages (actual or punitive), injuries to person or property, taking or damaging of property or interests in property without just compensation, nuisance, trespass, damages to natural resources, fines, penalties, interest sought by a governmental agency or a third party, or losses, or for the costs of site investigations, feasibility studies, information requests, health or risk assessments, contribution, settlement, or actions to correct, remove, remediate, respond to Remediation, prevent, mitigate, monitor, evaluate, assess, or abate the Release of Regulated Materials, or any other investigative, enforcement, Remediation, removal, containment, remedial, or other private or governmental or regulatory action at any time threatened, instituted, or completed pursuant to any applicable Environmental Law, or to enforce insurance, contribution, or indemnification agreements being made pursuant to a claimed violation or non-compliance with any Environmental Law.
- T. **“Environmental Condition”** means the presence of Regulated Materials or environmental contamination or damage by Regulated Materials at, upon, under, or adjacent to the Fuel System as a result of the escape, seepage, leakage, spillage, discharge, deposit, disposal, emission, or release of Regulated Materials from the Fuel System or arising out of the operation of the Fuel System.
- U. **“Environmental Laws”** means all Federal, state, or local laws, including statutes, ordinances, codes, rules, Airport guidance documents, written directives, plans, and policies of general applicability to all tenants, permits, regulations, licenses, authorizations, orders, or injunctions which pertain to health, safety, any Regulated Materials, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or aboveground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Hazardous Material Transportation Act, 49 U.S.C. Section 1801 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid

Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.* ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Denver Revised Municipal Code; any rules, regulations, or orders issued by the Denver Fire Department; and any other local, state, or federal environmental statutes, rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- V. "Environmental Permits"** means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, discharge, disposal, release, or storage of Regulated Materials as such permits relate to Lessee's activities at the Airport regardless of the entity listed as the permittee, licensee, or other approved party.
- W. "Environmental Professional"** means either an independent professional engineer licensed in the State of Colorado who is qualified to inspect airport fuel and Gasoline storage and transmission systems, or an environmental professional who is qualified to evaluate the Fuel System for the presence of Environmental Conditions and make recommendations concerning the Fuel System's compliance status with Environmental Laws.
- X. "Existing Environmental Condition"** means an Environmental Condition in existence before the Effective Date.
- Y. "EPA"** means the United States Environmental Protection Agency or its successor agency or agencies.
- Z. "FAA"** means the United States Federal Aviation Administration as presently constituted as a division of the DOT or its successor agency or agencies.
- AA. "Fuel System"** means the infrastructure described in the attached **Exhibit A**. The Fuel System includes, collectively and together with any future expansion, the elements of Aviation Fuel receipt, storage (both aboveground and underground, including but not limited to bulk storage facilities and other storage tanks and their appurtenances), transmission, management, and delivery systems, including but not limited to leak and release detection, spill containment facilities, emergency shut-off, dispensing systems and related facilities, fixtures, the Hydrant System, low point drains, high point vents, SPCC transfer areas and stations, as those terms are used in 40 Code of Federal Regulations ("**C.F.R.**") Ch. 112, vaults, maintenance facilities, equipment, transfer or transmission lines, and loading/ unloading racks. The Fuel System also includes the portions of the Avgas System and those GSE Facilities specifically stated in Exhibit A, but does not include any Compressed Natural Gas (CNG) systems, appurtenances, or equipment. As of the execution date of this Lease, the Fuel System is described in Exhibit A hereto and incorporated herein by reference, as the same from time to time may be modified, replaced, or expanded by letter executed by Lessee and the CEO. Also included in the Fuel System is the obligation to provide all labor, materials, supplies, equipment, and tools to maintain and operate on behalf of the City that certain portion of the Fuel System which is not leased to Lessee hereunder, known as the auxiliary

two-inch line extending from the Fuel System to the City's general boiler plant facilities, as noted in Exhibit A.

- BB. "Fuel System Cost Center"** includes but is not limited to the Fuel System and the Ground leased pursuant to this Lease and any and all equipment related and used for the receipt, storage, and distribution of Aviation Fuel, Avgas, Gasoline, or Other Products, including hydrant pits at the aircraft parking aprons and the Ground.
- CC. "Gasoline"** means automotive fuel, including diesel, which complies with the quality specifications established by Lessee from time to time.
- DD. "General Bond Ordinance"** means the 1984 Airport System General Bond Ordinance approved by the City Council of the City and County of Denver on November 29, 1984, Or. 626, Series of 1984, as supplemented or succeeded.
- EE. "Ground"** means the property described in **Exhibit B**, including the approximately 29.03 acre existing Fuel Storage Facility, and also the approximately 6.41 acres of land to the east of the existing Fuel Storage Facility (the "**Expansion Area**"), which the CEO may add at his or her discretion after consulting with Lessee. Such addition must be in writing but does not require amendment of this Lease. The ground rental rate for the Expansion Areas or other addition shall be at the same rate as that set out in Article 5 of this Lease and shall be effective as to the addition of the Expansion Area or other addition as of the date stated in notice to Lessee authorizing such addition.
- FF. "GSE Facility"** means collectively the automotive Gasoline storage and delivery system and related facilities and appendages as depicted on Exhibit A. This Lease includes only those GSE Facilities specifically described in Exhibit A and operated by Lessee pursuant to the Interline Agreement for the purpose of fueling vehicles related to the servicing of aircraft.
- GG. "GSE Facility Access Agreement"** means an agreement between Lessee and another Person to allow certain defined privileges and limited access to the GSE Facility, as such agreement is amended from time to time.
- HH. "Hydrant System"** means those certain fueling hydrants and related equipment located at the Airport and the pipelines serving such fueling hydrants from their point of connection to the bulk storage facilities, together with any future hydrants and associated equipment added from time to time and made a part of the Lease Premises.
- II. "Industry Standards"** means the customary industry management practices applicable to the construction, maintenance, and operation of Aviation Fuel systems and Gasoline storage and distribution systems at the majority of large hub airports in the United States, including, but not limited to, those issued by the National Fire Protection Association, Air Transport Association of America, Airlines For America, American Petroleum Institute, and the FAA, to the extent such management practices issued by such institutions are specifically applicable to Aviation Fuel or Gasoline storage and distributions systems located at large hub airports in the United States similar to the Airport.
- JJ. "Interline Agreement"** means the agreement among all Air Carriers that are Contracting Airlines pertaining to the allocation of rentals, rates, fees, and charges established for the

City Fuel System Costs, other expenses associated with Lessee's operation and maintenance of the Fuel System, and covering other Fuel System related issues such as default, withdrawal, insurance, and indemnification. The Interline Agreement shall not discriminate against or treat differently subsequent additional airlines.

- KK. "Itinerant User"** means any person or company who takes delivery of Aviation Fuel from the Fuel System but who is not a Contracting Airline, Associate/Affiliate Airline, or a Non-Contracting User, as defined in the Interline Agreement.
- LL. "Into-Plane Service Provider"** means any Person that: (i) executes a Fuel System Access Agreement; and (ii) obtains all necessary approvals and permits from City to perform into-plane fueling services for Users at the Airport.
- MM. "Lease"** means this Fuel System Lease Agreement and all amendments and supplements hereto.
- NN. "Lease Premises"** means the Fuel System and the Ground.
- OO. "Lessee Capital Improvements"** means capital improvements and material repairs, upgrades, or replacements to or for the Fuel System or Lease Premises installed or performed by Lessee.
- PP. "LLC Agreement"** means the limited liability company agreement among the Contracting Airlines that are members of Lessee and governing Lessee.
- QQ. "Non-Contracting User Agreement"** means the agreement between Lessee and any person other than a Contracting Airline or Affiliate Airline desirous of using the Fuel System for the storage of Aviation Fuel; such Non-Contracting User Agreement shall contain the terms, obligations and restrictions upon such usage, and appropriate insurance and indemnification provisions. This shall be in a form subject to DEN approval, including any changes or amendments to the form.
- RR. "Non-Contracting User"** means any person or company who has previously executed a Non-Contracting User Agreement.
- SS. "Operating Agreement"** means the agreement between Lessee and Operator for the maintenance and operation of the Fuel System (as the same may be amended, supplemented or modified from time to time).
- TT. "Operator"** means a qualified and duly licensed independent contractor selected by Lessee to enter into the Operating Agreement, substantially in a form initially approved by the Airport, to exercise on behalf of Lessee certain rights and obligations of Lessee, including without limitation those arising under this Lease, the Interline Agreement, the Fuel System, Avgas and GSE Facility Access Agreements, and the Non-Contracting User Agreements, as more particularly described in the Operating Agreement.
- UU. "Other Products"** means any materials other than Aviation Fuel stored in or put through the Fuel System for use in connection with the use of aircraft or service vehicles.

VV. “Person” or “person” means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, governmental body, or other legal entity or organization.

WW. “PFAS” or “PFAS Chemicals” means intentionally added perfluoroalkyl and polyfluoroalkyl substances.

XX. “Regulated Materials” means any wastes, substances, radiation, or materials (whether solids, liquids, or gases) that are defined as or included in the definition of "Regulated Materials", "hazardous wastes", "hazardous materials", "hazardous substances", "solid wastes", "universal wastes", "toxic substances", "toxic pollutants", "contaminants", "pollutants", "regulated substances", or words of similar import, under any applicable federal, Colorado, or local rules, regulations, statutes, laws, or orders.

YY. “Rent” means the City Cost Recovery Charges, City Fuel System Costs, and Ground Rent as described in Section 5.01.

ZZ. “Supplier” means any person that has an agreement with any of the Users, or any wholly-owned subsidiary of a User, for the sale and supply of Aviation Fuel, Avgas, or Gasoline at the Airport.

AAA. “Tenant Capital Improvements” mean Tenant’s capital improvements and material repairs, upgrades, or replacements to or for the Fuel System or Lease Premises.

BBB. “User” means any Contracting Airline (including Affiliate Airline), Non-Contracting User, Itinerant User or other person or entity that uses the Fuel System for the receipt, storage, or distribution of Aviation Fuel or Other Products.

1.03 Interpretation.

In this Lease, unless the context otherwise requires:

- A.** the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this Lease refer to this Lease;
- B.** all Article and Section references, unless otherwise expressly indicated, are to Articles and Sections of this Lease;
- C.** words importing persons shall include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons;
- D.** any headings preceding the text of the Articles and Sections of this Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction, or effect; and
- E.** words importing the singular shall include the plural and vice versa.

1.04 Incorporation of Exhibits.

The following exhibits attached hereto are hereby made a part of this Lease by this reference:

- Exhibit A:** Fuel System description/depiction
- Exhibit B:** Ground description/depiction
- Exhibit C:** Projects reviewed and approved by DEN and considered Tenant Capital Improvements for purposes of this Lease.
- Exhibit D:** Insurance

1.05 Governing Law, Venue.

- A.** This Lease is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto, including as they may be amended during the Term.
- B.** This Lease is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.
- C.** Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

1.06 Line Of Authority.

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (the "CEO"), authorizes and directs all activity under this Lease. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Manager of Airline Affairs & Airport Properties (the "**Project Manager**"). Reports, memoranda, correspondence, and other submittals required of Lessee hereunder shall be processed in accordance with the Project Manager's directions.

1.07 Dispute Resolution.

Disputes arising under or related to this shall be resolved as follows:

- A.** First, by either Party notifying the other Party in writing that it is invoking the process set forth in this Section. Unless an expedited timeframe is necessary due to a material impact if the timeframes set forth herein are followed, within thirty (30) calendar days from the issuance of notification of a dispute, each Party shall appoint a senior management representative not directly involved in the dispute, and said representatives shall agree on a date to meet and confer. The appointed representatives shall meet in-person or by video conference and attempt to resolve the dispute.
- B.** If such dispute cannot be resolved by the appointed representatives within sixty (60) days from the date of the first meeting, the dispute shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5-17 and DEN

Rule 250. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to either party's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE II: LEASE PREMISES

2.01 Lease Rights Granted.

The City hereby grants to Lessee the right to construct upon, occupy, and use the Lease Premises, consistent with and subject to all of the terms and provisions of this Lease, solely for the purposes of use, operation, maintenance, and management of the Fuel System at the Airport and activities reasonably necessary or convenient, in connection with the foregoing, including the use of the available roadways, water lines, sewer lines and drainage systems serving the Fuel System and Lease Premises. The Lease Premises shall be utilized for no other purposes, unless otherwise authorized in writing by the CEO.

- A. The City hereby leases to Lessee and Lessee hereby leases from the City the Fuel System, as described in **Exhibit A** hereto, on the terms and conditions set forth in this Lease.
- B. The City hereby leases to Lessee, and Lessee hereby leases from the City, the Ground, as described in **Exhibit B** hereto, on the texts and conditions set forth in this Lease.

2.02 Existing Rights; Reservation to City; Condition of Lease Premises.

- A. The rights and privileges granted in this Lease are subject to prior easements, rights of way, and other matters affecting title to the Lease Premises. The Lease Premises are expressly subject to an avigation easement hereby reserved to the City and the Airport for the flight of aircraft over the Lease Premises.
- B. It is understood that the use of the Lease Premises is restricted by (1) the zoning code designation by the City; (2) by the Intergovernmental Agreement ("IGA") dated April 21, 1988, between the City and Adams County, including its amendments; and (3) by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipal entity having jurisdiction over the Airport.
- C. The City also expressly reserves from the Lease Premises all oil, gas, and other mineral rights, and all water rights.
- D. City reserves for itself the right to install utilities upon areas of the Lease Premises as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant permits, licenses, and easements in areas of the Lease Premises for the installation of utilities, provided that the use of such areas or the grant of any such permit, license, or easement does not unreasonably interfere with Lessee's operations and use of the Lease Premises. Lessee shall not be entitled to any compensation or abatement of rent if the use of such areas or the grant of such easements does not unreasonably interfere with Lessee's operations or use of the Lease Premises.

2.03 Lessee takes the Lease Premises "As Is."

- A. Lessee specifically acknowledges that the City makes no warranty, express or implied, as to

the Lease Premises or their condition or that they will be suitable for Lessee's purposes or needs. Lessee acknowledges that it is leasing the bulk storage facility portion of the Lease Premises after a full and complete examination and is responsible for all Existing Environmental Conditions, including without limitation, subsurface conditions, existing structures thereon, the presence of any Regulated Materials located on the bulk storage facility portion of the Lease Premises prior to the Effective Date, and accepts the same in the same condition in which they or any part thereof now are, and (except as otherwise expressly provided in the Lease) assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the City and without recourse to the City. Notwithstanding the foregoing, however, with respect to any Existing Environmental Conditions discovered, uncovered, exposed, tested or sampled in the soils in connection with any activity performed on the Fuel System (other than within the bulk storage facility, for which Lessee has responsibility and so to which the following limitation of responsibility shall not apply), such responsibility for Existing Environmental Conditions shall be limited to Aviation Fuel or Gasoline existing in the soils within the Fuel System area for any pipeline or any tank, pipeline, which shall in no event be more than a ten-foot wide strip of land (five feet on either side of the centerline of the pipe). To the extent there are documented releases of Aviation Fuel from the Hydrant System occurring prior to the Effective Date, Lessee shall be responsible for the extent of those releases in soils if migrating beyond the aforementioned ten-foot limitation.

B. HPV-5. Lessee accepts responsibility for any soil and groundwater contamination resulting from the release of Aviation Fuel at High Point Vent #5 (“**HPV-5**”). Regarding HPV-5, the Parties agree as follows:

1. DEN will allow Lessee to negotiate with any governmental agency, including but not limited to U.S. EPA and the Colorado Department of Public Health and Environment (CDPHE) regarding the extent of remediation of any soil and groundwater contamination present in the HPV-5 area. Risk-based remediation that provides for Aviation Fuel to remain in the soils and groundwater associated with the HPV-5 area must be approved under applicable state regulations.
2. To the extent DEN or its contractors engage in any activities in the HPV-5 area that encounter Existing Environmental Conditions, Lessee will be responsible for all costs associated with such Existing Environmental Conditions, but only to the extent such costs are directly related to the scope of work being performed by DEN or its contractors.
3. Upon written notice to Lessee from DEN that DEN intends to develop a site that is affected by HPV-5 contamination for which Lessee is responsible, Lessee agrees to remediate such site on a schedule to be agreed-to between DEN and Lessee irrespective of what might otherwise be required by state or federal regulation. To the extent DEN elects to perform the remediation as part of site development, DEN and Lessee shall meet to discuss the scope of the remediation and Lessee shall be responsible for all reasonable costs directly related to such contamination. There is a presumption of reasonableness for costs related to venting, barriers or other industry standard methods to prevent vapors associated with existing contamination from entering occupied structures.
4. Upon prior approval of DEN, Lessee will be allowed to place reasonable restrictions in property records regarding use of groundwater and worker safety in the HPV-5 area.

2.04 Access.

Subject to any rules and regulations heretofore or hereafter 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, Lessee has the right of access, ingress to and egress from the Lease Premises for Lessee, Lessee's Operator, and their employees, agents, guests, contractors, insurers, patrons and invitees, its equipment, vehicles, machinery, and other property. No charges, fees or tolls of any nature shall be imposed by the City in connection with, any rights of access leading directly to the Lease Premises.

2.05 Modification of Access Route.

The City may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or other route or right-of-way for such access, ingress and egress, and any other area at the Airport or in its environs presently or hereafter used as such, so long as a means of access, ingress and egress reasonably equivalent to that formerly provided is substituted therefor and is concurrently made available therefor. Lessee hereby releases and discharges the City of and from any and all claims, demands, or causes of action which Lessee may now, or at any time hereafter, have against the City, arising or alleged to arise out of the closing of any roadway, taxiway/apron or other route or right-of-way for such access, ingress and egress or other area at the Airport or in its environs used as such.

2.06 Alterations to Lease Premises.

Lessee may, with the prior written approval of the CEO, at its own cost and expense, install on the Lease Premises any fixture or improvement or do or make alterations or do remodeling, germane to the use herein or hereafter granted. Any fixtures, improvements, equipment, and other property installed, erected, or placed by Lessee in, on or about such Lease Premises shall be deemed to be personal and shall be and remain the property of Lessee, except as otherwise provided herein, and Lessee shall have the right at any time during the Term hereof to remove any or all of its property, subject to Lessee's obligation to repair damage, if any, resulting from such removal. All such fixtures, improvements, equipment and other property shall be removed from said Lease Premises by the expiration or earlier termination of letting and the Lease Premises restored to the condition existing at the time of the letting, reasonable wear and tear excepted, unless the Airport shall have advised Lessee in writing at the time of such installation or not less than sixty (60) days in advance of such expiration or not less than thirty (30) days in advance of such earlier termination, of its willingness to accept title to such fixtures, improvements, equipment and other property in lieu of restoration of the Lease Premises. It is understood and agreed that during such period and until such personal property is removed, Lessee shall pay to the Airport the full rental applicable to the Lease Premises, as determined by the Airport, which are directly associated with said personal property and which Lease Premises is not usable by others until said property is removed. Said improvements, and all alterations thereof and additions thereto, 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 and Regulations governing tenant construction specifications and other non-technical requirements (including design standards and development guidelines), and pursuant to any required building permit to be obtained from the City and according to the customary terms and conditions thereof. Said construction of improvements and alterations shall comply with this Lease and any procedures adopted thereto. Lessee in connection with any said

improvements or alterations shall cause to be procured liability insurance and builders risk insurance.

2.07 Line Fill.

The Airport owns the Aviation Fuel Line Fill, as adjusted from time to time, associated with the Fuel System.

ARTICLE III: USE OF LEASE PREMISES

3.01 Permitted Uses.

Lessee shall have the right to use the Lease Premises for receipt, distribution, storage, and handling, purchase, sale, and dispensing of Aviation Fuel, Avgas, and Other Products for aircraft, vehicles, and equipment operated by any User and for maintenance, use and operation of the Fuel System and the carrying on of activities reasonably necessary or convenient in connection with the foregoing.

3.02 Limitations Upon Use.

Lessee shall not commit waste with respect to the Lease Premises and shall not commit or permit any nuisance from or upon the Lease Premises.

3.03 Compliance With All Laws and Regulations.

Lessee agrees not to use or permit the Lease Premises to be used for any purpose not authorized hereunder or that is prohibited by any current or future laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, including as these may be amended. Lessee further agrees that it will use the Lease Premises in accordance with all current and future applicable federal, state, and local laws, and all generally applicable rules and regulations adopted by the City or the CEO for the management, operation, and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations, requirements, or actions of the FAA or other authorized regulatory agency. Lessee further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Lessee or which the CEO may reasonably request relating to Lessee's operations.

3.04 Utilities.

Lessee shall be responsible for obtaining and paying for all utilities required by Lessee at the Lease Premises.

3.05 Public Access to Fuel System.

A. User Access. Lessee shall establish reasonable and not unjustly discriminatory member capital contribution amounts, and establish rates and fees, including terms and conditions, for the use of the Fuel System, including the Avgas System and the GSE Facility, by all Users, including, without limitation, Contracting Airlines (and Affiliate Airlines), Non-Contracting Users, and Itinerant Users.

- B. Non-Contracting User Agreements.** Lessee may require, as a condition to the use of the Fuel System, that Air Carriers either become a Contracting Airline as set forth in the LLC Agreement and Interline Agreement, or a Non-Contracting User by executing and delivering a Non-Contracting User Agreement to Lessee providing for the payment of fees, appropriate insurance and indemnification provisions, and such other matters as may be reasonably required by Lessee. Non-Contracting Users' rentals, rates, fees and charges shall not be more than 150% of the rentals, rates, fees and charges payable by the Contracting Airline with the highest budgeted monthly cost, as determined by the allocation formulas in the Interline Agreement.
- C. Itinerant Users.** Unless otherwise approved by the City, Itinerant Users' rentals, rates, fees, and charges shall not be more than 175% the rentals, rates, fees and charges payable by the Contracting Airline with the highest budgeted monthly cost, as determined by the allocation formulas in the Interline Agreement.
- D. Avgas System and GSE Facility User Agreements.** Lessee may require, as a condition to the use of the Avgas System or the GSE Facility that Persons execute and deliver an Avgas System Access Agreement or a GSE Facility Access Agreement to Lessee providing for the payment of fees, appropriate insurance and indemnification provisions, and such other matters as may be reasonably required by Lessee. The Avgas System and GSE Facility Access Agreements shall be in a form subject to DEN approval, including any changes or amendments to the form. Lessee shall not discriminate among different users when allowing access to the GSE Facilities.

3.06 Operator Agreement.

The rights conferred upon Lessee under this Lease may be exercised by an Operator selected by Lessee with the approval of the Airport. The Operating Agreement with Operator shall set forth Operator's responsibilities with respect to the Fuel System, and shall include, without limitation, the following obligations and responsibilities of Operator:

- A. Collections of Charges.** Operator shall collect the rentals, rates, fees, and charges established for the City Fuel System Costs and other applicable charges from the Users and pay them to the Airport.
- B. Compliance with Laws.** Operator shall properly operate and maintain the Fuel System in good, safe, and sanitary operating condition and repair and in accordance with applicable laws and regulations, including rules and regulations governing the Fuel System and the Airport promulgated by the City, the CEO, or any regulatory agency with jurisdiction over the Airport or Operator's activities.
- C. FAA Guidance.** Operator shall comply with the Advisory Circulars prepared and distributed by the **FAA** or other governmental agencies which relate to Aviation Fuel or Other Products storage, handling, and dispensing on airports.
- D. Hours of Operation.** Operator shall operate the Fuel System twenty-four (24) hours per day, seven days per week.

- E. Impartiality.** Operator shall furnish services impartially to each Contracting Airline and shall not favor any Contracting Airline over any other Contracting Airline.
- F. Indemnification and Insurance.** Operator shall provide indemnification to the City and maintain insurance policies of the kind and in the amount required by the City pursuant to Article VIII herein.
- G. Minimum Wage.** To the extent it applies to Operator, Operator shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. Sections 20-82 through 20-84, 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 D.R.M.C. Sections. Any failure by Operator to strictly comply with the foregoing D.R.M.C. Sections shall result in penalties and other remedies authorized by the Ordinance.
- H. Operations.** Operator shall keep and maintain the Fuel System and all vehicles and equipment of the Operator relating thereto in a safe operating condition and good repair in accordance with Industry Standards and all applicable laws. Lessee agrees that the Operating Agreement shall require Operator to operate and maintain the Fuel System, at all times, in a manner consistent with that of a reasonable and prudent operator and in accordance with this Lease, Industry Standards and all applicable laws.
- I. Prevailing Wage.** Operator shall comply with City's Prevailing Wage Ordinance, D.R.M.C. § 20-76 *et seq.*, as such Ordinance may apply to Operator's activities at the Airport. The Operator is prohibited from hiring any subcontractor that is currently debarred by City in accordance with D.R.M.C § 20-77.
- J. Prompt Payment.** Operator shall comply with D.R.M.C. § 20-112 wherein Operator is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (D.R.M.C. §§ 20-107 through 20-118).
- K. Records.** Operator shall keep complete and accurate records concerning receipt, storage and distribution of Aviation Fuel and Other Products by each Lessee, Non-Contracting User, Itinerant User, Into-Plane Service Provider, and Supplier.

3.06 Termination of Operator Agreement.

If Lessee terminates its agreement with Operator, Lessee shall ensure that the following will occur:

- A.** All reserve deposits, special assessment funds, or other excess funds previously held by Operator in connection with the operation of the Fuel System or otherwise owed by Operator to any User shall be transferred by Operator to Lessee or to another party designated by Lessee to be allocated or applied pursuant to the Interline Agreement.
- B.** All capital assets or personal property leased or owned by Operator in connection with the operation of the Fuel System shall be transferred by Operator to Lessee or another party

designated by the Lessee to be used in connection with the operation of the Fuel System pursuant to the Interline Agreement and this Lease.

ARTICLE IV: CAPITAL IMPROVEMENTS TO THE FUEL SYSTEM

4.01 Capital Improvements by DEN.

- A. Lessee and DEN will meet no less than every five (5) years, to discuss planning and development for long-range capital improvements to the Fuel System, including without limitation expansions of the Fuel System. In the event DEN determines that capital improvements to the Fuel System are required, DEN shall notify Lessee in the manner required in this Lease.
- B. DEN shall include in such notice to Lessee detailed written information concerning such determination, including a description of the proposed improvements or expansions, the purpose and need for the capital improvements, the proposed contractor selected for such improvements, and the estimated impact of the improvements on the City Fuel System Costs.
- C. Lessee shall be provided ninety (90) days following receipt of such notice to review and submit written comments to DEN regarding such capital improvements.
- D. During the design, construction, or installation of capital improvements by the City, Lessee shall have the right to designate a consultant to work in cooperation with DEN to help ensure that all such capital improvements are consistent with and, before connecting to or with the existing Fuel System, will not impair the operations or operating capacity of the Fuel System. Notwithstanding the foregoing, DEN and Lessee acknowledge that the projects listed on **Exhibit C** have previously been reviewed and approved by DEN and shall be considered Tenant Capital Improvements for purposes of this Lease.
- E. Lessee shall not have the right to prevent the City or the Airport from proceeding with any capital improvements which have been implemented in accordance with an Airline Use and Lease Agreement, and the costs of such capital improvements shall be recovered from Air Carriers as provided in this Lease.

4.02 Lessee Capital Improvements.

- A. Prior to the commencement of any construction or installation related to the material alteration or material replacement of all or substantial portions of the Fuel System proposed by Lessee ("**Lessee Capital Improvements**"), Lessee shall submit the plans for such Lessee Capital Improvement to DEN for DEN's review and approval, in a form as requested by DEN, which approval DEN shall provide or withhold in its sole discretion, except that such approval shall not be unreasonably withheld, delayed, or conditioned if such proposed Lessee Capital Improvement is necessary to maintain the Fuel System in a safe and operational manner or in compliance with Industry Standards and/or applicable law.
 - 1. All plans shall comply with the DEN Tenant Development Guidelines, including as they may be amended.
 - 2. This review process does not apply to application for building permits, certificates of occupancy or other municipal functions not within DEN's authority.

- B.** DEN shall promptly review all plans submitted by Lessee and advise Lessee no later than ninety (90) days after receipt of such plans of any required conditions, requirements, and changes, if any, which shall thereafter be incorporated into revised plans. Except as provided above, DEN may reject all or any part of the plans for Lessee Capital Improvements, and in the event of such rejection, Lessee may submit revised plans for DEN's review and approval. DEN shall promptly review such revised plans and deliver notice to Lessee no later than one hundred twenty (120) days after receipt of same of the rejection of all or part of the revised plans or of any required conditions, requirements and changes, if any, which shall thereafter be incorporated into revised plans. If DEN fails to deliver notice to Lessee within one hundred twenty (120) days after receipt of plans or revised plans, the plans or revised plans as submitted by Lessee shall be deemed approved.
- C.** Lessee shall also procure all licenses and permits, including building permits, necessary to complete such Lessee Capital Improvements. During the construction or installation of any Lessee Capital Improvements, the City shall have the right, upon reasonable notice to Lessee, to inspect the Lessee Capital Improvements in order to ensure that all construction work, workmanship, materials, and installations are in material compliance with the approved Plans, Industry Standards, all applicable laws, and the City's design standards for the Airport, including without limitation the Airport's Design, Renovation, and Construction Lessee Projects Standard Operating Procedure, any applicable requirements within the jurisdiction of the City's Division of Small Business Opportunity ("**DSBO**"), or any other applicable standards or guidelines adopted from time to time by the City and delivered to Lessee, provided such standards or guidelines are applied reasonably and consistently to similar facilities and with similar lessees at the Airport. Moreover, Lessee shall complete all Lessee Capital Improvements in a manner that avoids any disruption to aviation activities at the Airport, unless otherwise authorized in writing by the City.
- D.** Notwithstanding the foregoing, the City and Lessee acknowledge that the projects listed on **Exhibit C** have previously been reviewed and approved by the City. Accordingly, the standards and obligations applicable to said projects will be governed by the lease requirements or other contractual arrangement between the City and Lessee in effect at the time of implementation of said projects. However, the projects listed on Exhibit C shall be considered Lessee Capital Improvement for all other purposes under this Lease.
- E.** Within ninety (90) days of completion of each Lessee Capital Improvement, a complete set of as-built drawings shall be delivered to the City in a media type and format reasonably acceptable to the City for the permanent records regarding the Fuel System maintained by the City. Lessee shall maintain all books, documents, records and agreements relating to Lessee Capital Improvements, pursuant to this Lease, for two (2) years after construction thereof. The City shall have the right through its representatives, and at all reasonable times, to review all such books, documents, records, and agreements of Lessee related to said Lessee Capital Improvements.
- F.** Upon completion of any Lessee Capital Improvement which, once completed, increases the square footage of the Fuel System, or any portion thereof, Lessee shall prepare at its expense and deliver to the City one reproducible set in an agreed upon format and one set in digital format of each of the following:

1. as-built plans showing the Lessee Capital Improvements in question, or such portion thereof;
 2. an ALTA/ ACSM survey by a State of Colorado registered land surveyor showing the location of all such Lessee Capital Improvements on the Fuel System; and
 3. revised copies of Exhibit A (upon completion of any GSE Facility), Exhibit B, and Exhibit C (as applicable) to this Lease. Final versions of such revised copies of Exhibits shall be exchanged by the parties and shall be incorporated herein by reference upon the **City's written approval thereof** without further amendment to this Lease. The parties shall mutually agree on the format of the Exhibits.
- G.** Lessee shall reimburse the City for all actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by the City in connection with its decision to grant or withhold consent to any proposed Lessee Capital Improvement.
- H.** Lessee shall require Operator and all of Lessee's construction contractors (and their subcontractors) to release and indemnify the City to the same extent and in substantially the same form as its release and indemnity to the City in Article VIII of this Lease. Insurance coverage may be scaled to the scope of the project a contractor is under contract to perform.
- I.** Lessee's completion of all Lessee Capital Improvements and any repairs to the Fuel System in a timely manner in accordance with schedules agreed upon between the Lessee and the City is a material term of this Lease. Except for Force Majeure conditions or other similar reasons for delay, if Lessee does not complete a Lessee Capital Improvement in the time and manner agreed upon between Lessee and the City, or fails to complete routine maintenance, service or repairs to the Fuel System to comply with this Lease or any applicable law, then, after sixty (60) days' written notice and opportunity to cure, the City in addition to any other remedy which may be available to it, may enter the Lease Premises and complete such Lessee Capital Improvements or routine maintenance, service or repairs. In the event the City completes any Lessee Capital Improvement, routine maintenance, service or repair under the provisions of this Section, Lessee agrees that upon request by the City, Lessee shall execute and deliver to the City an assignment of any construction contracts then in existence entered into by Lessee pertaining to such Lessee Capital Improvement, routine maintenance or repair. Lessee shall reimburse all reasonable Capital Improvement Costs incurred by the City in completing the same in accordance with Article V.

4.03 Construction Bond.

Prior to commencement of any Tenant Capital Improvement, Lessee shall deliver, or cause Lessee's contractor to deliver, to the City, in form and substance reasonably satisfactory to the City, payment and performance bonds of a surety company licensed to do business in the State of Colorado, naming the City as co-obligee (a "**Payment and Performance Bond**"), to be in the amount of the entire contract sum of the Tenant Capital Improvement in question. Lessee's obligation to provide Payment and Performance Bond(s) as required under this Section shall apply for the duration of construction of the Tenant Capital Improvement in question, including all design services and construction work associated with such Tenant Capital Improvement if any, and acceptance of such Capital Improvement by DEN, if required.

4.04 No Consent.

Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Fuel System or any part thereof, including, without limitation, a Lessee Capital Improvement.

ARTICLE V: PAYMENTS UNDER THIS LEASE

5.01 Payment of Costs and Ground Rental; Reserves.

A. City Fuel System Costs: For its use of the Fuel System, the Lessee shall pay to the City, monthly, City Fuel System Costs, which shall be determined as set forth in this Section:

1. The City will calculate the aggregate City Fuel System Costs by computing the sum of the following budgetary items for each fiscal year:
 - a. Debt service, if any, and fees and other costs associated with capital improvements allocable to the Fuel System funded from bonds, subordinated indebtedness, or other indebtedness; plus or minus any City Fuel System Costs not otherwise covered in this Section, including rates, fees and charges established and fixed for the Fuel System Cost Center in accordance with cost-accounting concepts and ratemaking procedures established and adopted by the Airport.
 - b. The City will calculate the monthly City Fuel System Costs by dividing the City Fuel System Costs by twelve (12). The City Fuel System Costs shall be paid in monthly installments. The first installment of the City Fuel System Costs shall be due upon the effective date of the Ground Rent as provided in Section 5.01.B.2 below and shall be prorated, as necessary, pursuant to Section 5.03. Subsequent installments shall be due, in advance, on the first day of each succeeding calendar month during the Term of this Lease.
 - c. At the end of each fiscal year, the City shall use reasonable efforts to recalculate the City Fuel System Costs established at the inception of each fiscal year on the basis of year-end audited financial statements. If there are differences between the adjustment-to-actual and the budgeted City Fuel System Costs, then: (1) if the City Fuel System Costs paid by Lessee was greater than the City's actual costs, Lessee shall receive credits promptly in the amount of such overpayment against future rentals, fees, and charges; or (2) if the City Fuel System Costs paid by Lessee was less than the City's actual costs, Lessee shall pay promptly the amount of any such deficiency.
2. In no event shall the City be entitled to recovery of duplicative City Fuel System Costs or City Cost Recovery Charge or Rent.
3. Lessee shall have the right, at any time and from time to time, using its own funds including, without limitation, the proceeds of any third party financing (i) to make Lessee Capital Improvements in accordance with this Lease, or (ii) to pay-off, refinance or otherwise replace any of the airport revenue bonds or any third party financing obtained

by the City to finance any capital improvement associated with the Fuel System (the “**City Cost Recovery Charge**”). Any such pay-off, refinancing, or replacement of Airport revenue bonds shall be at Lessee’ sole cost and expense and subject to the terms and conditions of such airport revenue bonds and/or third party financing obtained by the City, provided however, that City shall reasonably cooperate with Lessee in its efforts to accomplish any such pay-off, refinance, or replacement of such City or Airport revenue bonds.

B. Ground Rent. Following repayment of the City Cost Recovery Charges and subsequently during the Term, Lessee shall also pay to the City Ground Rent, which shall be calculated and adjusted as follows:

1. For the period commencing on the Effective date through six months after the City’s execution of this lease, or the repayment in full of the City Cost Recovery Charges as described in 5.01.B.2 below, Lessee shall continue to pay the City the monthly amount established by the City under the Fuel System Cost Center.
2. For the period commencing on the first day of the month following any month in which the Lessee pays in full the City Cost Recovery Charges, the Ground Rent for the Lease Premises shall be \$0.78 per square foot per year for the total square footage of the Lease Premises. The total square footage of the Lease Premises may be adjusted each January 1, or otherwise as may be necessary, to include any change in the square footage of the Fuel System as described in prior documents submitted to the City, and such changes will be effective as of the date of the parties’ agreement to the change, including any change needed in the amount of Ground Rent due to the changes in the Lease Premises; and
3. Except as described in subsection 5.01.B.1 and B.2 above, for each year during the Term, beginning on January 1st following the Effective Date and each January 1st thereafter, Ground Rent may be adjusted in accordance with DEN Rule 120, Rates and Charges.

5.02 Total Cost.

It is the intent of the parties hereto that the City shall not be responsible for any costs or expenses associated with the operation, maintenance, servicing, construction, installation, or repair or replacement of any portion of the Lease or any City Fuel System Costs as set forth herein, and that Lessee shall be liable for one hundred percent (100%) of such costs or expenses.

5.03 Place and Manner of Payments.

Commencing on the Effective Date and each month thereafter, Lessee shall pay all Rent in equal monthly installments on the first day of each calendar month, except that Rent for the first and last months of this Lease shall be prorated as necessary. Payments shall be due and payable without notice and until Lessee shall have been given notice otherwise by the City, Lessee shall pay all Rent to the place designated in writing by

5.04 Interline Agreement.

A. Lessee agrees to enter into an Interline Agreement not later than thirty (30) days after the execution of this Lease. Any adjustment made by and among the airlines with respect to the

individual obligation for payment of the rental, rates, fees, and charges established for the City Fuel System Costs and other applicable charges, is for Lessee's own accounting and convenience and shall in no manner affect any other provisions of this Lease, and in particular shall not in any manner affect any provisions for payments under this Lease.

- B.** It is understood by Lessee that the City has an interest in protecting against any discrimination and unfair means for allocating Fuel System costs and charges among all Lessee and Users of the Lease Premises. Accordingly, any changes by the Lessee in the allocation of the percentage split used in allocating the "Net Facilities Charge" as set forth in the Interline Agreement shall require City approval prior to the effective date of such change.

5.05 Reserves

Lessee shall make provisions to secure Lessee's obligations under the Lease, including rent, collection of fees and charges, and any obligations of Lessee for environmental costs, through a Reserve ("**Reserve**"). In addition to any rights and remedies that the City have under this Lease, the City shall have the right to demand any portion of the Reserve that it deems necessary to satisfy such obligations that Lessee has failed to complete under this Lease. To fund the Reserve, Lessee shall either submit to the City within thirty (30) days of the Effective Date a cash security deposit of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "**Security Deposit**") or shall maintain on deposit in accordance with the Interline Agreement the amount necessary to fully fund any self-insured retention on required insurance coverage, or Two Hundred Fifty Thousand Dollars (\$250,000.00), whichever is greater, and submit to the City promptly upon Lessee's receipt of demand for same from the City the amounts necessary to satisfy Lessee's obligations under this Lease up to a maximum aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), with any amounts in excess of \$250,000.00 to be approved in advance by Lessee. If any portion of the Reserve funds are held by the City, the City shall return to Lessee any unused portion of the Reserve funds within forty-five (45) days after the City determines that the Lessee's outstanding obligations under the Lease have been satisfied in full.

ARTICLE VI: LEASE TERM

6.01 Term of Lease.

The Term of this Lease shall begin on the Effective Date and will terminate on December 31, 2053, unless sooner terminated in accordance with other provisions of this Lease, including at the City's option, upon the occurrence of an Event of Default under Section 9.01.A or B of this Lease. The Term will automatically renew for up to two (2) additional five (5) year periods unless sooner terminated by one hundred eighty (180) days' prior written notice from the terminating party.

6.02 Surrender of Possession.

Upon termination of this Lease, whether at the expiration of the Term hereof or otherwise, Lessee covenants to peaceably surrender possession of the Lease Premises. Lessee shall surrender the Lease Premises in good condition, reasonable wear and tear excepted.

6.03 Termination.

- A. Termination by City.** In the event the CEO determines that termination of this Lease is required for Airport purposes, the City shall have the right to require termination of this Lease upon one hundred eighty (180) days' prior written notice to Lessee.
- B. Master Plan.** Lessee 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.
- C. Termination by Lessee.** Without limiting any rights that Lessee may have under any applicable law or at equity, Lessee may terminate this Lease and all further obligations at any time that Lessee is not in default in the payment of any amount due to the City, by giving the City ninety (90) days' advance written notice, upon or after the happening or during the continuance of any of the following events:
1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of or access to the Fuel System or the Airport or any part thereof so as to substantially affect the Lessee's use of the Fuel System or Airport in the conduct by its members of their air transportation business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least ninety (90) days.
 2. The issuance of any order, rule or regulation or the taking of any action by the federal Department of Transportation (DOT), Transportation Security Administration (TSA), or FAA or other authorized competent governmental authority, that materially impairs the business or operations of Lessee or Operator, or the occurrence of any casualty that for a period of at least ninety (90) days substantially impairs the business or operations of Lessee or Operator.
 3. The substantial restriction of the City's operation of the Airport by action of the United States, or any department or agency thereof, under its war time or emergency powers, or by action of the State of Colorado, or any authorized department or agency thereof, and continuance thereof for a period of not less than ninety (90) consecutive days, provided such restriction prevents Lessee's use or access of the Fuel System for a period of at least ninety (90) days.
 4. In the event the City is unable to, or is prohibited or prevented from, operating the Airport for airline operations for more than ninety (90) days, Lessee may terminate this Lease by giving written notice to the City in the manner herein provided.
 5. In the event that a majority of the Contracting Airlines cease providing Air Carrier transportation services to the Airport, upon notice to the City of its intention to do so at least ninety (90) days in advance of the termination date, which date shall be the last day of a calendar month.
- D.** In any event where the usage of the Airport or Fuel System by Lessee is substantially restricted or is prevented as provided in this Section, and whether or not the Lessee is entitled to cancel this Lease as herein provided, while such event is continuing, an equitable adjustment to the amounts herein required to be paid by the Lessee shall be made by the City.

- E. Upon any termination of this Lease, the Lessee shall, at DEN's request and option in DEN's sole discretion, assign the Operating Agreement to DEN.

6.04 Reversion.

Subject to applicable laws, the title to the Fuel System shall be vested in the City at all times, and title to any added improvements thereto shall be vested in the City upon DEN's written acceptance of title to said improvements at the expiration of this Lease, or upon the earlier termination of the Lease as provided herein.

6.05 Holding Over.

If the Lessee holds over after expiration of the Term or any extension thereof, thereafter Lessee's occupancy shall be deemed a month-to-month tenancy.

- A. If a holdover is due to Lessee's negligence or fault in a) failing to vacate the premises when Lessee intends to vacate, or b) failing to sign a new agreement presented to it in good faith by the City when Lessee intends to continue its occupancy, the Lease Premises Rentals for such holdover shall be equal to 150% of the Lease Premises Rentals provided for herein, but otherwise Lessee shall be bound by all compensation, terms and conditions of this Lease in the absence of a duly executed agreement or amendment to the contrary.
- B. If the holdover is at the request of the CEO, or with the written permission of the CEO, or upon mutual agreement of the CEO and Lessee, the Lease Premises Rentals for such holdover shall be the same as provided for herein, and Lessee shall be bound by all compensation, terms and conditions of this Lease.
- C. Nothing herein shall be construed to give Lessee the right to hold over at any time, and the City may exercise any remedy at law or in equity to recover possession of the Lease Premises, as well as any damages incurred by the City.

ARTICLE VII: MAINTENANCE BY LESSEE; and ENVIRONMENTAL REQUIREMENTS

7.01 Performance.

- A. Lessee shall be responsible for and shall perform or cause to be performed, at its own cost and expense, all maintenance and repair of the Fuel System so as to keep the Fuel System in good, safe, sightly, and functional operating condition. Lessee shall be responsible for all expenses related to the use, operation, maintenance, servicing, construction, installation, repair or replacement of any portion of the Fuel System, subject to and in accordance with the terms and conditions of this Lease.
- B. Lessee and DEN will meet annually to discuss maintenance projects as well as capital improvements to the Fuel System that will be performed by the Lessee, during the following year. Lessee shall follow Tenant Development Guidelines for maintenance and capital improvement projects, including all submittal and approval processes.
- C. Lessee shall pay all taxes and fees and obtain all necessary permits, licenses, or other approvals associated with such use, operation, maintenance, servicing, construction, installation, repair, or replacement of any portion of the Fuel System by Lessee under this

Lease. However, the Lessee may, at its own risk, cost and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment. Lessee shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City copies of receipts of payment. In the event the City receives any tax billings, it will forward said billings to Lessee as soon as practicable.

- D. Lessee shall be responsible for all utility costs associated with the Fuel System, including but not limited to electricity, gas, drainage, and communications.
- E. In the event Lessee fails to perform for a period of thirty (30) days after notice from the City so to do any obligation required by this Article to be performed by Lessee, the City may enter the Lease Premises involved (without such entering causing or constituting a termination of this Lease or an interference with the possession of the Lease Premises by Lessee) and do all things necessary to perform such obligation, charging to Lessee the cost and expense thereof; provided, however, that if Lessee's failure to perform any such obligation endangers the safety of the public or of employees of the City, and the City so states in its notice to Lessee, the City may perform such obligations of Lessee at any time after the giving of such notice and charge to Lessee, and Lessee shall pay the cost and expense of such performance.
- F. Lessee shall faithfully perform any work required under this Lease in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Lease. Lessee hereby represents and warrants to City that it will perform any required work skillfully, carefully, diligently, and in a first-class manner. Lessee agrees and understands that DEN, in its sole discretion, shall determine whether services are provided in a first-class manner. Lessee acknowledges that time is of the essence in its performance of all work and obligations under this Lease.

7.02 Information and Data Relating to the Fuel System and Fuel Use

- A. Lessee and or its Operator shall make available, within ten (10) business days of Lessee's receipt of DEN's written request, subject to document retention requirements provided by applicable law, the non-privileged and non-confidential data, as determined by Lessee, relating to Lessee's use, operation, maintenance, service, repair, and replacement of the Fuel System or other property at the Airport used by Lessee in connection with this Lease, including without limitation non-privileged and non-confidential written or electronic data, studies, or other documentation.
- B. If the Parties disagree whether certain data or information is privileged or confidential, the Parties will first cooperate in good faith to allow access to and use of as much data as the Parties agree is non-privileged and non-confidential. In the event the Parties are unable to agree whether data is privileged or confidential, either Party may submit notice pursuant to Section 1.07 of this Lease invoking the process set forth therein for resolutions of such dispute.

7.03 Sustainable Alternative Fuels (SAF).

Lessee and DEN will cooperate in good faith to allow use of SAF products (meeting ASTM 1655 standards) at the Airport and schedule an annual update to discuss status of SAF development and align on any infrastructure needs. Any plan related to infrastructure upgrades will be first discussed between Lessee and DEN, and subject to DEN review and approval.

7.04 Compliance with Environmental Requirements.

A. Compliance with Environmental Laws. Lessee shall conduct all of its operations under this Lease in full compliance with all current and future applicable environmental laws.

B. Environmental Management System. Lessee will comply with and cooperate with DEN's implementation of its ISO certified Environmental Management System, as outlined in DEN Rules and Regulations Part 180, including as may be amended from time to time.

C. Fuel System Integrity Testing. The Fuel System contains products that are "regulated substances" in accordance with C.R.S. § 8-20.5-101(13), which are stored or present in an Airport Hydrant Fuel Distribution System ("**Airport Hydrant System**" or "**AHS**") and may be subject to the requirements of 7 C.C.R. 1101-14-2-5, depending on the volume of substances stored beneath the surface of the ground relative to the entire volume stored in the system. As of the Effective Date, the AHS at the Airport is not regulated under 7 C.C.R. 1101-14-2-5 because the volume of fuel beneath the surface is less than the regulatory threshold. Lessee has agreed to the following operation and maintenance obligations to support confirmation of fuel system integrity:

1. Lessee will conform with release detection requirements set forth at 7 C.C.R. 1101-14-2-5-3(d) for airport hydrant systems and field constructed tanks. To the extent that these requirements cannot be met, Lessee will propose a capital improvement plan to meet the requirements on a reasonable schedule considering annual budgets and other capital improvements.
2. Lessee will conform with all corrosion protection requirements equivalent to those standards set forth at 7 C.C.R. 1101-14-2-5-3(b)(1).
3. Lessee will either conform with inspection criteria set forth in 7 C.C.R. 1101-14-2-5-3(c), or Lessee and City will agree on equivalent inspection criteria.
4. Lessee shall communicate scheduling of any testing and inspections to the City prior to them being performed. Representative from the City may be present during inspections and tests.
5. Lessee shall provide documentation to the City of all testing and inspections performed and show evidence that requirements set forth in this section 7.03.C. are met.

D. Aqueous Film Forming Foam (AFFF) and other Fire-Fighting Foams:

1. Discharge of AFFF containing PFAS Chemicals shall only occur to prevent a fire emergency or during a fire emergency, or when testing the AFFF system is required by a regulatory agency with jurisdiction. Lessee shall have methods and procedures in place to enable collection of all wastewater generated through planned, nonemergency releases of any AFFF that contains regulated substances, including but not limited to PFAS Chemicals. Collected wastewater shall be properly disposed. In the event of a fire or

other emergency release by Lessee, Lessee shall remediate the site impacted by the release and properly dispose of all liquids recovered.

2. On a schedule to be agreed-to between DEN and Lessee, and in accordance with any applicable Colorado or federal law, regulation, or ordinance, Lessee will replace the existing AFFF with PFAS with the non-PFAS product and perform any system modifications as may be required. Lessee will remove and properly dispose of all such AFFF with PFAS stored by Lessee for use on the Fuel System.

7.05 Lessee Environmental Representations, Warranties and Covenants.

Lessee represents, warrants, and covenants the following:

- A.** Lessee has obtained and throughout the Term shall obtain, regularly maintain and timely update all applicable Environmental Permits required to be held by Lessee and not otherwise the responsibility of DEN, and shall provide any notices required under Environmental Laws for operation of the Fuel System during the Term of this Lease. Lessee shall ensure that its Operator will obtain, maintain, and update all Environmental Permits pertaining to its and their use, operation, maintenance, service, repair, or replacement of the Fuel System. The City agrees to cooperate with Lessee in transferring any Permits held by the current Operator or the City regarding the Fuel System to the Lessee to the extent permitted by law.
- B.** Lessee shall comply and shall ensure that its Operator complies with all applicable Environmental Laws pertaining to its and their operations at the Airport.
- C.** Lessee shall not conduct its use, operation, maintenance, service, repair or replacement of the Fuel System during the Term so as to cause, unlawfully allow or contribute to, and shall ensure that its Operator does not cause, unlawfully allow or contribute to:
 1. Any discharge, disposal, or release at the Airport, unless authorized by an Environmental Law and, where applicable, the City will provide Lessee with all such permit terms regarding such authorizations;
 2. any violation of any applicable Environmental Law as a result in whole or in part, of the use by or operations of Lessee or its Operator of the Fuel System;
 3. any discharge, disposal, or release in violation of any applicable Environmental Law which is a contributing cause of the City exceeding any terms, conditions or effluent limits of any National Pollutant Discharge Elimination System (NPDES) permit or stormwater discharge permit or wastewater permit issued to the City, or applicable standard of the State of Colorado or Metro Water Recovery;
 4. any discharge, disposal, or release to the soil or waters at, underlying, or adjacent to the Lease Premises in violation of any applicable Environmental Law; or
 5. any emissions to the air in violation of any applicable Environmental Law that results in an exceedance of an applicable emission standard at the Airport or of any terms or conditions of any City or Lessee air permit.
- D.** Lessee shall, and shall ensure that its Operator shall, handle, use, store, dispose of, transport, or otherwise manage Regulated Material in connection with its use, operation, maintenance, service, repair, or replacement of the Fuel System during the Term in compliance with applicable laws. To the extent applicable, and without limiting the foregoing, Lessee shall be, and shall ensure that its Operator shall be, responsible for the proper removal, transportation,

and disposal of all Regulated Material generated by Lessee or its Operator, or resulting from Lessee's use, operation, maintenance, service, repair or replacement of the Fuel System, including those activities and operations conducted by its Operator. In such cases, in the event a signature as "generator" is required on waste manifests, waste profile sheets or generator's certifications of non-special waste, Lessee shall ensure that either Lessee or its Operator signs such documents.

- E.** Lessee shall be, and shall ensure that its Operator is, responsible for the maintenance of any structural controls (above-ground or below-ground) used to treat sanitary sewer waste and stormwater runoff operated by Lessee or its Operator on the Lease Premises during the Term. Maintenance frequencies for structural controls shall be established by the Lessee in a reasonable manner in accordance with industry standards and applicable Environmental Laws to ensure effective operation of such controls and to prevent failures of such controls that could result in the discharge, disposal, or release of Regulated Materials in violation of any applicable Environmental Law. Lessee shall ensure that environmental records required to be kept by applicable law, including any stormwater pollution prevention plan or other applicable Environmental Permit, are maintained on-site for a period of three (3) years, unless a different document retention requirement is provided by applicable law.
- F.** Lessee shall be, and shall ensure that its Operator shall be, responsible for the maintenance of air pollution control equipment required by any applicable Environmental Law and operated by Lessee or its Operator on the Lease Premises during the Term, if any. Maintenance frequencies for such air pollution control equipment shall be established by Lessee in a reasonable manner in accordance with Industry Standards and applicable Environmental Laws to ensure effective operation of such equipment and to prevent failures of such equipment that could result in the emission of pollutants in violation of any applicable Environmental Law. Lessee shall ensure that environmental records related to air permitting required to be kept by applicable laws are maintained on-site for a period of three (3) years unless a different document retention requirement is provided by applicable law.
- G.** If Lessee or its Operator cause, unlawfully allow, or contribute to a discharge, disposal, or release of a Regulated Material at the Airport in violation of any applicable Environmental Law that is above any applicable reportable quantity, emission standard or effluent guideline set forth in any applicable Environmental Law, Lessee shall report such discharge, disposal, or release to the City and the appropriate governmental authorities in compliance with applicable Environmental Laws. Lessee shall ensure that its Operator report any discharge, disposal, or release in violation of any applicable Environmental Law to the appropriate governmental authorities, in compliance with applicable Environmental Law, if the operations of Lessee or its Operator cause, unlawfully allow or contribute to a discharge, disposal, or release in violation of any applicable Environmental Law that is above any reportable quantity set forth in any applicable Environmental Law.
- H.** Lessee acknowledges that the City is subject to a variety of regulatory requirements regarding prevention of stormwater pollution, including but not limited to NPDES permits, state and federal stormwater regulations, and federal and state effluent limitation guidelines, and sewer provider standards for operations at the Airport. The City will provide Lessee with all permits and any other documents regarding discharge limits and Stormwater Pollution Prevention Plan obligations. Lessee shall, and shall cause its Operator to, use, operate, maintain, service, repair and replace the Fuel System in compliance with all applicable Environmental Laws. Lessee acknowledges that its reasonable cooperation is necessary to ensure Airport's

compliance with any applicable NPDES stormwater permits and effluent limitation guidelines under Environmental Laws. Lessee shall minimize the exposure to stormwater of materials generated, stored, handled, or used by Lessee or its Operator at the Lease Premises, including Regulated Materials, by implementing and requiring implementation of certain written "Best Management Practices" as defined by and required under Environmental Laws, and make them available to the City upon reasonable request. Lessee further acknowledges that any effluent limitation guidelines in any NPDES stormwater discharge permit issued to the City and timely provided to Lessee applicable to the Lessee are incorporated by reference into this Lease to the extent affecting the stormwater system, or necessitating Lessee's reasonable cooperation to assure the City's compliance therewith. The City shall provide advance notice to Lessee of and a reasonable opportunity to comment on, and shall otherwise endeavor to negotiate reasonable and cost effective terms and conditions of any Environmental Permits issued to the City which may affect Lessee's or its Operator's use, operation, maintenance, service, repair or replacement of the Lease Premises, or which may necessitate Lessee's reasonable cooperation to assure the City's compliance therewith.

- I. Lessee or its Operator shall cooperate with the City, as reasonably requested from time to time by the City, to ensure that Lessee's operations at or use of the Airport will not unreasonably interfere with the City's implementation of its obligations to reduce wildlife hazards at the Airport.
- J. Lessee, prior to vacating or surrendering any portion of the Fuel System for any reason, shall, in addition to the requirements set forth elsewhere in this Lease:
 - 1. remove and dispose of any and all trash, debris, or waste generated by Lessee or its Operator;
 - 2. remove any and all aboveground containers and non-permanent structural controls owned by Lessee or its Operator, including, but not limited to, removable filters, grates and aboveground tanks located on the Lease Premises, unless Lessee and the City agree otherwise; and
 - 3. comply with applicable Environmental Laws regarding the closing or removal from service of any portion of the Fuel System including any underground or aboveground tanks, vessels, and containers operated or owned by Lessee or its Operator and located on the Lease Premises.
- K. Lessee understands and acknowledges that certain of its and the City's future capital projects at the Lease Premises may require review or approval by FAA, EPA, CDPHE, or other governmental authorities pursuant to requirements imposed upon the Airport or the City. If requested by the City, Lessee shall reasonably cooperate with the City in its preparation of such submittals as are required of the City by such governmental authorities in connection with Lessee's Capital Improvements or in connection with the City capital projects which benefit Lessee.
- L. In addition to the foregoing, Lessee shall act with due care and in compliance with Industry Standards in connection with materials and substances used by Lessee at the Airport, even if not regulated by law or requirements as aforesaid, so as not to pose a hazard to the health or safety of the current or future users and occupants of the Fuel System and any other areas at the Airport or to the owners or occupants of property adjacent to or in the vicinity of the same or to the environment.

7.06 Inspection and Periodic Environmental Audit.

- A.** Lessee shall, or shall cause the Operator to, conduct regularly scheduled inspections of the Fuel System in accordance with Industry Standards and any applicable Environmental Laws to ensure environmental compliance. Such inspections shall include, but not be limited to, inspections of vaults, pits, sumps, drains and any other features of the Fuel System where releases of Regulated Materials could occur. The findings of each inspection shall be documented in a format that can be transmitted to the City and Lessee. Such inspection records shall be provided to the City as they are performed. In the event any such inspection report identifies corrective measures required to maintain the integrity of the Fuel System or remedy or prevent releases of Regulated Materials, the Lessee shall cause such corrective measures to be commenced within a reasonable time in accordance with this Lease.
- B.** In addition to the regular Fuel System inspections by the Operator, within six (6) months from the Effective Date of this Lease, Lessee shall cause a third-party Environmental Professional to perform a comprehensive non-intrusive assessment of the Fuel System to determine whether an Environmental Condition exists (the "**Initial Assessment**") and provide a report of said assessment to the City. Prior to initiation of the Initial Assessment, the City, Lessee, Operator and the Environmental Professional will meet and discuss the scope of the Initial Assessment. Should the Initial Assessment recommend the need for any soil, air, groundwater, and water sampling and analysis as is reasonably necessary to determine the presence of Environmental Conditions, the Lessee and City shall meet to discuss such recommendations. Sampling results that (i) are available to either the City or Lessee for those areas identified for sampling; and (ii) were collected within one (1) year prior to the Initial Assessment may be used to satisfy the need for the data sought to be collected. A draft scope of work describing the planned Initial Assessment shall be submitted to and approved by the City prior to initiation of the Initial Assessment. The final Initial Assessment report will be provided to the City within five (5) business days from receipt of the same by Lessee.
- C.** On a recurring basis every five (5) years from the Initial Assessment report described above during the term of this Lease, the Lessee shall retain a third-party Environmental Professional who shall be responsible for completing an Environmental Audit of the Fuel System. Prior to initiation of any Environmental Audit, the City, Lessee, Operator and the Environmental Professional will meet and discuss the scope of the Environmental Audit. Such Environmental Audit may include such soil, groundwater, and water sampling and analysis as is reasonably necessary to determine the presence of Environmental Conditions, unless otherwise required by the City. A draft scope of work describing the planned Environmental Audit shall be submitted to and approved by the City and Lessee prior to initiation of the Environmental Audit. The final Environmental Audit report will be provided to the City within five (5) business days from receipt of the same by Lessee.

7.07 Right of Entry to Perform Environmental Inspections and Sampling.

- A.** The City and its contractors and other agents shall, in addition to any other inspection right under this Lease or any applicable law, have the full right to enter or inspect any part of the Fuel System, at all reasonable times and in the City's sole discretion, for the purpose of conducting an inspection, assessment, investigation, regular inspection, or regulatory compliance audit of Lessee's or other party's use, operation, maintenance, service, repair and replacement thereof, including those of Operator. The City and its authorized agents may take samples and perform tests as needed, including but not limited to soil borings, groundwater

monitoring, and collection of samples of air, soil, water, groundwater, and discharge, disposal, and releases at the City's initial expense (any such expenses may be recovered as City Fuel System Costs). Should the City conduct any intrusive sampling, such sampling results may be used by Lessee to satisfy any obligation of the Lessee to perform similar sampling as required under Section 7.03. The City will provide seventy-two (72) hours' advance written notice of any planned City inspection or intrusive City sampling to Lessee, except in emergencies, when advance notice shall not be required. Lessee shall have the right to accompany City when any such inspection or sampling is performed, provided that the City is not required to unreasonably delay its inspection or sampling to enable Lessee to be present. Lessee shall have the right to obtain, at Lessee's expense, split samples, and the City shall promptly provide copies of all analytical results of such sampling, including any non-privileged reports.

- B.** Lessee shall cooperate, and shall ensure that its Operator cooperate, in allowing prompt reasonable access to the City to conduct such inspection, assessment, audit: sampling, or tests. In the exercise of its rights under this Section, the City shall not unreasonably interfere with the authorized use and occupancy of the Fuel System by Lessee or its Operator. Lessee remains solely responsible for its environmental, health, and safety compliance, notwithstanding any the City inspection. audit, or assessment.

7.08 Information to be Provided to the City.

- A.** If Lessee receives any written notice, citation, order, warning, complaint, claim or demand regarding Lessee's use, operation, maintenance, service, repair, or replacement of the Fuel System or other property at the Airport used by Lessee in connection with this Lease that is not legally privileged, made confidential by applicable Law, or protected as trade secrets:
1. concerning any alleged discharge, disposal, or release by Lessee or by its Operator;
 2. alleging that Lessee or any of its Operator is the subject of an Environmental Claim or alleging that Lessee or its Operator may be in violation of any Environmental Laws; or
 3. asserting that Lessee or its Operator is liable for the cost of investigation or remediation of a Discharge, Disposal, or Release; then
 4. Lessee shall promptly, but not later than five (5) business days after Lessee's receipt, inform the City in writing of same, including a copy of such notice received by Lessee.
- B.** Lessee shall simultaneously provide to the City copies of its submittals of any non-privileged reports or notices required under Environmental Laws to any governmental agency regarding Lessee's or its Operator's alleged failure to comply with any Environmental Laws in connection with the Fuel System or other property at the Airport, or any discharge, disposal, or release arising out of the past or present operations at or use of the Fuel System or other property at the Airport.
- C.** Lessee shall make available, within ten (10) business days of Lessee's receipt of the City's written request, subject to document retention requirements provided by applicable law, the non-privileged documents that Lessee has submitted to any governmental agency pertaining to the environmental compliance status of Lessee's use, operation, maintenance, service, repair, and replacement of the Fuel System or other property at Airport used by Lessee in connection with this Lease, including without limitation any and all non-privileged records, permits, permit applications, test results, sample results, written or electronic documentation, studies, or other documentation regarding environmental conditions or relating to the

presence, use, storage, control, disposal, or treatment of any Hazardous Substance or Other Regulated Material by Lessee or its Operator in or on the Fuel System or other property at the Airport.

7.09 Environmental Remediation.

- A.** Lessee shall be solely responsible for compliance with all applicable Environmental Laws and Environmental Permits regarding any remediation of any Environmental Condition. Any remediation required under this Lease shall be performed promptly at Lessee's sole cost and expense; provided, however, that nothing herein shall limit Lessee from recovering such expenses from third-parties including Operator. Except in the event of an emergency, such remediation shall be performed after Lessee submits to the City a written plan for completing such remediation and receives the prior approval of the City. Lessee shall promptly take all reasonable actions, including without limitation assessment, testing, investigation, and remediation at its sole cost and expense as are necessary to cause the Fuel System, Airport, and any other areas for which such remediation is required to comply with the requirements of applicable Environmental Laws.
- B.** Specific cleanup levels applied by Lessee for any environmental removals, remediation or corrective actions shall comply with applicable Environmental Laws, with commercial and industrial remediation standards being applied to such actions consistent with the use of the Airport for such purposes.
- C.** In the event Lessee shall fail timely to commence or cause to be commenced or fail diligently to prosecute to completion such reasonable actions as are necessary to cause the Fuel System to comply with the requirements of applicable Environmental Laws, the City may, but shall not be obligated to, cause such action to be performed, and all costs and expenses (including, without limitation, attorneys' fees) thereof or incurred by the City in connection therewith shall be paid by Lessee promptly upon demand. The City may also, in its discretion, deem such costs a City Fuel System Cost and elect to recover the costs pursuant to Section 5.01 or any other method permitted under this Lease or any applicable law. In addition, in the event that the City performs a Remediation of an Environmental Condition, the City retains all of its rights to recover the costs of such work from any responsible or liable party, including the Operator, and to include the costs of such work in the landing fees or other fees or rents charged to Air Carriers as permitted by law or contract.

7.10 Environmental Indemnification and Reimbursement.

- A.** Notwithstanding any other provision in this Lease to the contrary, Lessee agrees to indemnify, defend, and hold harmless the City, its appointed and elected officials, successors, agents, employees, and volunteers (collectively the "**City Indemnified Parties**") from and against any and all Environmental Claims resulting from:
 - 1. the breach by Lessee of any representation or warranty made in this Article; or
 - 2. the failure of Lessee to meet its obligations under this Article, whether caused or unlawfully allowed by Lessee, its Operator, or any other third party under Lessee's direction or control; or
 - 3. any Environmental Condition; or
 - 4. Any investigation, monitoring, remediation, containment, removal, storage, or restoration work performed by the City or a third party due to Lessee's or its Operator

- use, placement, or discharge, disposal, or release (of whatever kind or nature, known or unknown) on the Airport, or any other areas impacted by this Lease, related to Lessee's or its Operator's activities under this Lease; or
5. Any actual, threatened, or alleged Regulated Materials contamination by Lessee or its Operator related to Lessee's activities under this Lease; or
 6. The discharge, disposal, or release by Lessee or its Operator related to Lessee's or Operator's use, operation, maintenance, service, repair, or replacement of the Fuel System under this Lease that affects the soil, air, water, vegetation, buildings, personal property, or persons; or
 7. Any personal injury, death or property damage (real or personal) arising out of or related to the use or remediation of Regulated Materials by Lessee or its Operator; or
 8. Any violation or alleged violation by Lessee or its Operator of any Environmental Law in connection with Lessee's use, operation, maintenance, service, repair or replacement of the Fuel System.

B. Nothing in this Lease shall modify, extinguish or limit the rights of the City to pursue any environmental matter related to the Fuel System against any third-party, including but not limited to Operator, a licensee or User of the Fuel System, or any Into-Plane Service Provider. The City's remedies with regard to environmental matters against Lessee are cumulative and survive termination of this Lease.

7.11 Site Assessment at Lease Expiration or Termination.

A. Lessee shall comply with the following assessment and remediation requirements at the termination or expiration and non-renewal of this Lease:

1. Within one hundred twenty (120) days of the expiration and non-renewal or any other termination of this Lease, Lessee shall, unless otherwise requested by the City, perform a comprehensive site assessment of the Fuel System to ensure that an undetected Environmental Condition has not occurred during the term of this Lease (the "**Termination Assessment**") and provide a report of said assessment to the City. For the purpose of comparison, the Termination Assessment shall be compared to the most recent Environmental Audit performed pursuant to Section 7.05 along with historic leak and cathodic protection test information. The Termination Assessment shall be performed by an Environmental Professional reasonably acceptable to the City, using the most current technology, consistent with Industry Standards and good commercial practice, reasonably available at the time of the termination.
2. The Termination Assessment report shall reasonably identify and locate, based on available information, all Environmental Conditions on or emanating from the Fuel System. The report shall provide for a plan and schedule for Lessee to Remediate all such Environmental Conditions, except Environmental Conditions where no further remediation is required to comply with Environmental Laws or Environmental Permits, to the same extent it would have been required to had such Environmental Conditions been discovered during the term of the Lease, at Lessee's sole cost and expense, to a condition which satisfies all applicable Environmental Laws.
3. The City may reasonably require additional or revised remediation and the supplementation of the Termination Assessment report to the extent consistent with Lessee's obligations under this Article.
4. Until such remediation is complete in accordance with: (a) the Termination Assessment report; (b) all applicable Environmental Laws; and (c) any necessary regulatory agency

approvals, Lessee shall remain obligated diligently to pursue to completion all required remediation and all applicable reporting and information sharing requirements of this Article. If requested by Lessee, the City shall provide Lessee with reasonable access to the Fuel System and other areas of the Airport after the expiration or termination of this Lease so that Lessee can fulfill its obligations under this section, provided Lessee pursues its obligations diligently to completion.

7.12 Fuel Storage Tank Inspection and Testing.

Lessee shall, at its sole cost, perform inspections of all Fuel and Gasoline storage tanks that are part of the Fuel System, whether above ground or below ground, in accordance with all state requirements and Industry Standards including but not limited to API standards. Advance notice of any such inspections and testing shall be provided to the City, and the City may observe such inspections and testing at its option. A written report of the testing shall be provided to the City within thirty (30) days following such inspections and testing. Any and all resulting repairs and/or replacement of any portion of the Fuel System as a result of these inspections and testing shall be performed in accordance with this Article at Lessee's sole cost.

7.13 Leak Detection and Monitoring.

- A.** Lessee will perform semi-annual release detection testing as described in Section 7.03C for the term of the Lease on as much of the Airport Hydrant System as possible. For the remainder of the Fuel System, Industry Standard leak test methods shall be used (*i.e.* pressure chart recorder). Advance notice of any testing performed during the term of this Lease shall be provided to the City, and the City may observe such testing at its option. Final reports describing the leak test of the Fuel System and identifying whether or not the pipelines evaluated have satisfactorily passed the leak test shall be provided to the City no later than five (5) business days after the receipt of the report.
- B.** If any part of the Fuel System does not receive a satisfactory leak rate result and is reported to have failed the leak test, Lessee will re-test the part of the Fuel System that failed as soon as possible and determine if the leak detection test failure represents a false positive, or if a Release of Fuel or Gasoline from the Fuel System may be occurring. If upon further testing and evaluation the part of the Fuel System at issue passes the leak test, a supplemental report of the subsequent leak testing, including sufficient information to describe the additional testing protocols, will be submitted to the City within five (5) business days from receipt.
- C.** If subsequent leak testing does not achieve a passing result and a leak of Fuel or Gasoline from the Fuel System may be occurring, Lessee will immediately provide notification to the City of the test results used to identify the leak condition, the location of the leak, if known, and the plans for repair of the leak. If the location of the leak is not known, Lessee will describe to the City how it plans to locate the leak, the process Lessee proposes to follow in repairing the leak, and how the repair will affect the operation of the Fuel System. Lessee will use best efforts to repair the leak as soon as possible, considering applicable laws, availability of qualified contractors, access to the structure or equipment that is leaking, weather, and the threat to human health, safety and the environment. The City may oversee or observe the leak testing, location and repair process at any time.

7.14 Fuel System Idling or Abandonment on the Airport.

- A.** Should Lessee determine that any part of the Fuel System in operation as of the Effective Date, formerly in operation prior to the Effective Date, or installed subsequent to the Effective Date, is no longer necessary to the operation of the Fuel System, then Lessee shall comply with all Industry Standards, applicable laws, and the City's instructions for proper decommissioning, demolition, and removal of that portion of the Fuel System.
- B.** Lessee may with the City's prior written permission which shall not be unreasonably withheld, decommission and abandon in place, rather than remove, a portion of the Fuel System which Lessee has determined is no longer necessary to the operation of the Fuel System. In evaluating the request for abandonment in-place, the City may consider, among other things, the presence of pavement or structures overlying the Fuel System or access to the Fuel System due to surface use or other Airport operations, planned uses for the area of the Airport where the Fuel System is located, applicable laws and Industry Standards. Lessee shall perform any such decommissioning and abandonment in place of any portion of the Fuel System permitted by the City in accordance with all Industry Standards, applicable laws and the City's instructions.
- C.** Whether the part of the Fuel System at issue is to be removed, idled or permanently abandoned, Lessee shall first confirm that to the extent reasonably possible, all Regulated Materials contained within that part of the Fuel System have been removed and, in the case of a portion of the Fuel System that is abandoned in place, that the part of the Fuel System at issue is further secured by filling with inert material.
- D.** Prior to and immediately following decommissioning of any portion of the Fuel System, regardless of whether or not that portion of the Fuel System will be removed, Lessee shall engage an Environmental Professional to prepare an environmental sampling and analysis plan of the portion of the Fuel System to be decommissioned, subject to the City's review and approval, to confirm that all Regulated Materials contained within that portion of the Fuel System have been, or at the conclusion of the decommissioning will be, removed or remediated to a condition which satisfies all applicable Environmental Laws.
- E.** Upon removal of all Regulated Materials contained within the part of the Fuel System at issue, and completion of any remediation associated therewith, the location of the decommissioned part will be documented by GPS or survey or other method to provide notice to all interested parties of the presence of the abandoned part of the Fuel System on the Airport.
- F.** Any costs incurred by the City in connection with the decommissioning, demolition, removal, or remediation of any portion of the Fuel System shall be considered a City Fuel System Cost, regardless of whether such demolition or removal is conducted in the first instance by the City, Lessee, or Operator and regardless of whether the City has previously permitted Lessee to abandon the portion of the Fuel System at issue in place.

7.15 Survival of Environmental Provisions.

Unless specifically stated elsewhere herein, the provisions of this Article, including the representations, warranties, covenants, and indemnities of Lessee, are intended to and shall survive the expiration or earlier termination of this Lease.

ARTICLE VIII: INDEMNITY, INSURANCE

8.01 Defense and Indemnification.

- A.** To the fullest extent permitted by law, the Lessee agrees to defend, indemnify, reimburse, and hold harmless the City Indemnified Parties for, from and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Lease that are attributable to the Lessee, its Operator or their agents, representatives, subcontractors, or suppliers (“**Claims**”). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- B.** Lessee’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 suit has been filed and even if Lessee is not named as a Defendant.
- C.** Lessee 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 reasonable attorneys’ 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.
- D.** Insurance coverage requirements specified in this Lease shall in no way lessen or limit the liability of Lessee under the terms of this indemnification obligation. Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for its or the City’s protection.
- E.** Without limiting the foregoing, the Lessee shall cause the Operator to agree to protect, defend, indemnify and hold the City Indemnified Parties free and harmless from and against any and all Claims, damages, demands, and causes of action of all kinds including Claims of property damage, injury or death, or arising out of or being in any way connected with its performance under this Lease except for matters shown by final judgment to have been caused by or attributable to the negligence of any City Indemnified Party to the extent prohibited by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120. The indemnification provided herein shall be effective in favor of the City Indemnified Parties to the maximum extent permitted by applicable Law. To the extent City Indemnified Parties reasonably expend any cost and expense, including attorneys’ fees, in investigating or responding to such Claims, demands and suits, Lessee will reimburse the City Indemnified Parties for all such costs and expense.

8.02 Indemnification Procedures.

- A.** The City shall notify Lessee as soon as practicable of each Claim, action, proceeding or suit in respect of which indemnity may be sought by the City against Lessee hereunder, setting

forth the particulars of such Claim, action, proceeding or suit, and shall furnish Lessee with a copy of all judicial filings and legal process and any correspondence received by the City related thereto.

- B. The City shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings related to any Claim against the City, provided that City shall bear the costs of its participation to the extent such participation is not in furtherance of City's defense of any such Claim. The City shall approve the terms of any settlement related to such Claim which requires the City to perform or refrain from performing any action; provided that such approval will not be unreasonably withheld if a settlement includes a full and unconditional release for City Indemnified Parties.
- C. Without limiting the generality of any other provision hereof, Lessee shall reimburse the City for the cost of any and all reasonable attorneys' fees and investigation expenses and any other reasonable costs incurred by the City in the investigation, defense and handling of said suits and Claims and in enforcing the provisions of this Lease.
- D. Notwithstanding the provisions of this Section 8.02, the Lessee's indemnification obligations regarding environmental Claims, Environmental Conditions, and all other matters addressed by Article VII are set forth in Section 7.08.
- E. The obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City that would exist under any applicable law or under other provisions of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Lease.
- F. Subject to Section 8.02(D), Lessee shall be liable for any loss or damage to any personal property or equipment of Lessee, its agents, servants, employees, officials, or independent contractors.
- G. Lessee waives the right of contribution, subject to Section 8.02(D), and subrogation against the City Indemnified Parties.
- H. This defense and indemnification obligations of Section 8.01 and Section 8.02 shall survive the expiration or early termination of this Lease.

8.03 Insurance Requirements.

- A. Lessee shall obtain and keep in force minimum insurance requirements as set forth in **Exhibit D** during the entire Term of this Lease, including any extensions of the Lease or other extended periods.
- B. Lessee shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

- C. The insurance requirements are minimum requirements and do not lessen or limit the liability of Lessee. Lessee shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.
- D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Lessee or its Operator; (ii) damage, theft, or destruction of Lessee's or its Operator's inventory, or property of any kind including owned or operated automobiles.
- E. In lieu of cyber risk insurance, Lessee shall, on an annual basis each calendar year during the term of this Lease, retain a third-party consultant, acceptable to the City, to complete a cyber risk assessment of the Fuel System. City must be notified in advance of each assessment and included as a participant in the process. All related reports and recommendations must be provided to the City, in their entirety, and Lessee shall affect any and all recommendations the City deems prudent in its sole discretion.
- F. Subsequent to the Effective Date of the Lease, and upon satisfactory resolution of the Section 7.06.B Environmental Baseline Audit findings, if any, and upon a certified passing result for the leak detection testing as required by Section 7.04.C, the City and the Lessee will meet and discuss a reduction in the environmental insurance coverage limit that is reflective of satisfaction of the environmental evaluations described above. Any reduction in the coverage limit agreed to by the Parties will be based upon the performance of Lessee in operation of the fuel system subsequent to the Effective Date, and would be effective upon the event of renewal of the then-current coverage.

8.04 Incident Reporting.

Other than reporting required under Article VII with respect to Regulated Products to which this Section shall not apply, Lessee shall promptly investigate and report to City through an agreed upon procedure all material Claims for damages or expenses, resulting in bodily injury, property damage, or personal injury to a third party, occurring at the Lease Premises or arising from the operation on or maintenance of the Lease Premises resulting in any material damage or destruction to the Lease Premises. Lessee shall cooperate with City to coordinate, as needed, the estimated costs of repair to the Lease Premises, and, upon request from the City, to advise on the proposal for and status of resolution and/or defense with respect to any such Claim, damage, or destruction.

8.05 Colorado Governmental Immunity Act.

Lessee understands and agrees that City and County of Denver, and its officers, officials, and employees, are relying on, and do not waive nor intend to waive by any provisions of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or that otherwise may be available to City and County of Denver, its officers, officials, and employees.

ARTICLE IX: LIENS AND CLAIMS

9.01 Prompt Payment of Taxes and Fees.

Lessee covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature which are not included as part of the rentals, rates fees and charges established and fixed in accordance with this Lease, applicable to operation of the Fuel System at the Airport, and to take out and keep current all licenses, municipal, state and federal, required for its operations upon the Lease Premises, and further covenant and agree not to permit any of said taxes, assessments, excises, fees, or charges to become delinquent.

9.02 Mechanic's and Materialmen's Liens.

- A. Lessee shall not have any right to file any non-consensual or consensual liens against any portion of the Fuel System, or any property of the City, and the Lessee shall keep the Fuel System free and clear of liens or claims of liens in any way arising out of the use, operation, maintenance, service, repair; and replacement of the Fuel System by the Lessee or its Operator or contractors. The Lessee shall promptly take such steps as are necessary to release any claim for lien or attempted claim for lien from the Fuel System or any property of the City.
- B. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Fuel System or any part thereof or any other City property with respect to the performance of any labor or the furnishing of any materials to, by or for Lessee or anyone claiming by, for, or under Lessee, Lessee shall within thirty (30) days after notice of the filing thereof cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the City may, if such lien shall continue for fifteen (15) days after notice from the City to Lessee, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding or otherwise, and in any such event, the City shall be entitled, if the City so elects upon another fifteen (15) days' notice from the City to Lessee, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the City and all costs and expenses incurred by the City in connection therewith, together with interest at the rate of twelve percent (12%) per annum from the respective dates of the City's making of the payment or incurring of the cost and expense, shall constitute a City Fuel System Cost payable by Lessee under this Lease and shall be paid by Lessee to the City on demand.

9.03 Prompt Payment of Other Obligations. Lessee further covenants and agrees to pay promptly when due, all bills, debts and obligations incurred by them in connection with its operation of the Fuel System and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Lease Premises or Fuel System or any part thereof which will in any way impair the rights of the City under this Lease without the prior consent of the CEO.

ARTICLE X: EVENTS OF DEFAULT

10.01 Events of Default Defined.

The occurrence of any one or more of the events described in the following subsections of this Section shall constitute a "default" under 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" under this Lease:

- A. Failure by Lessee to pay when due any rentals or other payments required to be paid under this Lease;
- B. Any material breach by Lessee of any of its representations or warranties made in this Lease, any failure by Lessee to make any other payment required to be made by them hereunder or any failure by Lessee to observe and perform any of its covenants, conditions or agreements made on its part to be observed or performed hereunder (other than a failure to pay referred to in subsection (A) of this Section), for a period of 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 Lessee by the City, 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, and corrective action is instituted by Lessee within the applicable period and is being diligently pursued.

10.02 Remedies on Default.

Whenever any Event of Default shall have happened and be continuing, the City shall have the right, at the City's election, then or at any time thereafter, to exercise any one or more of the following remedies:

- A. The City may terminate this Lease, as a whole (if the Event of Default is one described in Section 10.01.B effective at such time as may be specified by written notice to the Lessee. Upon the occurrence and continuation of an Event of Default, the City may demand (and, if such demand is refused, peaceably recover) possession of the Lease Premises from Lessee.
- B. Lessee shall remain liable to the City for damages in an amount equal to the rentals, rates, fees and charges established for the City Fuel System Costs and other payments required to be paid under Article V hereof and any other sums which would have been owing by Lessee hereunder for the balance of the term, less any amounts which are recovered by the City in reletting the Lease Premises;
- C. For events of default described in Section 10.01.B, the City may reenter and take possession of the Lease Premises or any part thereof, without demand or notice, and repossess the same and expel Lessee and any party (including the Operator) claiming by, under or through Lessee, and remove the effects of both using such force for such purposes as may be necessary, 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 Lease Premises 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 Lessee. No 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 Lessee such written notice, in which event the Lease will terminate as specified in said notice.

- D. 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 Lessee under this Lease.

10.03 No Remedy Exclusive.

No remedy herein conferred 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 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. In order to entitle the City to exercise any remedy reserved to it hereunder, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

ARTICLE XI: DAMAGE TO OR DESTRUCTION OF THE FUEL SYSTEM

11.01 Insured Property.

Lessee agrees that if the Fuel System or any other improvements on the Lease Premises are damaged or destroyed, Lessee will, at its sole cost and expense, repair, reconstruct, and restore such portions of the Fuel System or other improvements on the Lease Premises to substantially the same condition, character, and utility as existed prior to the damage or destruction or such other condition, character, or utility as may be agreed upon by the City and Lessee. The City retains the right to undertake repairs of the damaged property in the event that Lessee fails to timely submit an insurance claim and/or adequately undertake repairs or restoration.

11.02 Disbursement of Insurance Proceeds; Repair Work Approval; Final Cost.

In the case of damage or destruction to the Fuel System insurance proceeds shall be disbursed to the Lessee by its insurer and shall be applied by Lessee to the cost of the work. Prior to undertaking any permanent repair Lessee must: (i) obtain the City's written approval of the plans and specifications for the proposed repair, and (ii) provide written certification, satisfactory to the City, that such portions of the Fuel System, once restored, will comply with applicable Industry Standards and laws. Lessee may elect or be required to pay any difference between insurance proceeds and final costs of repair or restoration, but if Lessee elects not to pay such difference, the City may pay for the cost of such repair or reconstruction and charge such costs in the rate base calculations as permitted by law or contract, or terminate this Lease, at its option.

ARTICLE XII: CITY GENERAL PROVISIONS and MISCELLANEOUS

12.01 City's Right of Access and Inspection. City, its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times and in a reasonable manner, upon notice to Lessee or the Operator, to enter upon the Lease Premises, for the

purpose of inspecting the Lease Premises, or for doing any act or thing which the City may be obligated or have the right to do under this Lease, or otherwise, and to post any notices which, in the opinion of the CEO, are necessary to hold the City harmless from any claim or liability arising out of any work done in, on or about said Lease Premises, or in connection with the use thereof by Lessee. No abatement of rent shall be claimed by or allowed to Lessee by reason of the exercise of such right. In the exercise of rights under this Section, the City, its officers, employees, agents, representatives and contractors, shall use their best efforts to avoid interfering with the conduct of Lessee' businesses on the Lease Premises as herein authorized.

12.02 Colorado Public Records Law or "CORA."

A. Lease Subject to Colorado Open Records Act. Lessee acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §§24-72-201 *et seq.* Lessee agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Lessee asserts is confidential or otherwise exempt from disclosure. Lessee acknowledges all documents prepared or provided by Lessee under this Lease may be subject to the provisions of the Colorado Open Records Act. Any other provision of this Lease notwithstanding, including Exhibits and other documents incorporated into this Lease by reference, all materials, records, and information provided by Lessee to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Lessee agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City. Lessee agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Lessee asserts is confidential and exempt from disclosure.

B. Indemnification in Event of Objection. In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Lessee of such request in order to give Lessee the opportunity to object to the disclosure of any material Lessee may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Lessee objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Lessee agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Lessee does not wish disclosed. Lessee agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Lessee's objection to disclosure including prompt reimbursement to City of all reasonable attorneys' fees, costs, and damages that City may incur directly or may be ordered to pay by such court, including but not limited to time expended by City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars (\$200.00) per hour of City Attorney time.

12.03 Compliance with Municipal Regulations. Lessee shall comply with and shall cause its officers and employees and any other persons over whom it has control (including its Operator) to comply with such reasonable rules and regulations governing the use of the Fuel System 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 and pertaining to the operation of

automobile and vehicular traffic and parking facilities thereon, and with such amendments, revisions, additions and extensions thereof as may from time to time be adopted and promulgated.

12.04 Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Lessee is encouraged, with respect to the goods or services to be provided under this Lease, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

12.05 Enforceability. Notwithstanding any provision of this Lease, this Lease is for the benefit of the Lessee and the City, and may be enforced only by Lessee or the City. Neither Operator nor any other person or entity shall be considered a third-party beneficiary of this Lease.

12.06 Examination of Records.

- A.** 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 related to Lessee's performance pursuant to this Lease, provision of any goods or services to the City, and any other transactions related to this Lease ("**Records**"), and, solely with respect to non-privileged and non-confidential data or information, the right to copy and retain copies of such Records, at City's election in paper or electronic form. Lessee shall cooperate with City representatives and City representatives shall be granted access to the Records and information during reasonable business hours and until the latter of three (3) years after the final payment under the Lease or expiration of the applicable statute of limitations. When conducting an audit of this Lease, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Lessee to make disclosures in violation of state or federal privacy laws. Lessee shall at all times comply with D.R.M.C. §20-276.
- B.** Additionally, Lessee agrees until the expiration of three (3) years after the final payment under the Lease, any duly authorized representative of the City, including the CEO, shall have the right to examine any pertinent books, documents, papers and records of Lessee related to Lessee's performance of this Lease, including communications or correspondence related to Lessee's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.
- C.** In the event the City receives federal funds to be used toward the services performed under this Lease, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Lessee which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Lessee further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

12.07 Force Majeure. Neither party shall be liable to the other for any failure (except for the payment of Rent or other monies required by this Lease), delay or interruption in the performance of any of the terms, covenants or conditions of this Lease due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes,

shortages of material, acts of God, acts of the public enemy, action of superior governmental authority, final approvals by the FAA, including but not limited to approvals under the National Environmental Policy Act (NEPA), weather conditions, floods, riots, rebellion, sabotage, acts of terrorism or any other circumstance for which such party is not responsible in whole or in part or which is not in its power to control (each a “**Force Majeure Event**”). In the event that either Party is unable to perform any of its obligations under this Lease, or to enjoy any of its benefits because of a Force Majeure Event or actions of decrees of government bodies, the Party who has been so affected shall immediately give notice to the other Party and shall use best efforts to resume performance. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

12.08 Information Furnished by the City. The City will furnish to Lessee information concerning matters that may be necessary or useful in connection with the rights and obligations of Lessee under this Lease. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Lessee understands and acknowledges that the information provided by the City to Lessee may contain unintended inaccuracies. Lessee shall be responsible for the verification of the information provided to Lessee by the City.

12.09 Interruption of Services. Lessee agrees that the City shall not be liable for failure to supply any utility services or maintenance services City may otherwise be responsible for providing under this Lease so long as the City is using all commercially reasonable efforts to restore the same. The City reserves the right to temporarily discontinue utilities or maintenance services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed or operate to release the Operator from any of its obligations hereunder, except as otherwise provided in herein.

12.10 Minority/Women Business Enterprises.

A. This project has been reviewed by the Division of Small Business Opportunity (“**DSBO**”) and it has been determined that it is not subject to D.R.M.C. Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Lease is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Lease and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

B. If modifications are issued under the Lease, Lessee shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon change, increase or decrease in the activities allowed under this Lease, upon any of the bases discussed in D.R.M.C. § 28-70.

12.11 No Authority to Bind City to Contracts. Lessee has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

12.12 Noise, Odors, Vibrations, and Other Annoyances. Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Lease Premises or annoy, disturb, or be offensive to others at the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, vapors, odors, lights and vibrations.

12.13 Non-Discrimination Policy. In connection with the performance of activities under the Lease, Lessee may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Lessee shall insert the foregoing provision in all subcontracts.

12.14 Notices. Except as otherwise provided herein, all notices to the City provided for herein shall be in writing and shall be sent: (a) by personal delivery, nationally-recognized commercial overnight delivery service, (b) by registered or certified U.S. mail, postage prepaid and return receipt requested, addressed to the City as set forth below, or to such other address(es) as the City may designate from time to time by notice to Lessee or as required by this Lease, and shall be deemed given upon receipt, or upon attempted delivery where delivery is refused or mail is unclaimed; or (c) to the extent expressly permitted elsewhere in this Lease for a specific notice or as mutually agreed by the City and Lessee, by electronic mail with electronic receipt. All notices to Lessee provided for herein shall be in writing and shall be sent: (a) by personal delivery, nationally-recognized commercial overnight delivery service, (b) by registered or certified U.S. mail, postage prepaid and return receipt requested, addressed to Lessee as set forth below, or to such other address as Lessee may designate from time to time by notice to the City, and shall be deemed given upon receipt, or upon attempted delivery where delivery is refused or mail is unclaimed; or (c) to the extent expressly permitted elsewhere in this Lease for a specific notice or as mutually agreed by the City and Lessee, by electronic mail with electronic receipt.

12.15 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder.

12.16 No Obstruction to Air Navigation. Lessee agrees that no obstruction to air navigation and/or airfield surface and air traffic controller site lines as determined by application from time to time of the criteria of the FAA, or its successor, will be permitted on the Ground after the Facilities shall have been completed, and any such obstruction placed on the Ground by Lessee shall be removed by it at its own cost and expense. The City agrees that it will not add to or realign the runways at the Airport in such manner that the Facilities shall be deemed in the future to constitute such an obstruction.

12.17 Performance by the City upon Failure by Lessee. If Lessee fails to perform, for a period of thirty (30) days after written notice from the City, any obligation required by this Lease, including the Exhibits hereto, the City may perform such obligation of Lessee and charge Lessee for the cost to the City of such performance; provided, however, that if Lessee's failure to perform any such obligation endangers the safety of operations at the Airport, including the Fuel System, and the City so states in its notice to Lessee, the City may perform such obligation of Lessee at any time after the giving of such notice and charge Lessee for costs of such performance.

12.18 Qualification in the State of Colorado. Lessee warrants that it is, and throughout the Term of this Lease it (or transferee or assignee corporation permitted by this Lease) will continue to be, duly qualified to do business in the State of Colorado.

12.19 Security and SSI.

A. Security. Lessee, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Lessee or City by the FAA or TSA. If Lessee, its officers, authorized officials, employees, agents, subcontractors, or others under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Lessee covenants to fully reimburse City any fines or penalties levied against City, and any attorneys' fees or related costs paid by City as a result of any such violation. This amount must be paid by Lessee within fifteen (15) days from the date of the invoice or written notice.

B. Sensitive Security Information. Lessee acknowledges that, in the course of performing its work under this Lease, it may be given access to Sensitive Security Information ("SSI"), as material is described in federal regulations, 49 C.F.R. Part 1520. Lessee specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Lessee understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN's Security Office.

12.20 Severability. In the event any covenant, phrase, clause, paragraph, Article, Section, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, phrase, clause, paragraph, Article, Section, condition, or provision shall in no way affect any other covenant, phrase, clause, paragraph, Article, Section, condition, or provision herein contained, and such determination shall not invalidate or render this Lease unenforceable.

12.21 Smoking Policy. Lessee and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99, as amended from time to time, or a successor Executive Order, prohibiting smoking in all indoor buildings and facilities. Lessee further agree that it will prohibit smoking by its employees, Operators' employees and the public on the Lease Premises.

12.22 Structural or Electrical Overloading. Lessee agrees that nothing shall be done or kept in or on the Lease Premises and no improvements, changes, alterations, additions, maintenance, or repairs shall be made to the Fuel System which might result in an overload of utility lines serving the Airport or interfere with electric, electronic, or other equipment at the Airport. In the event of violations hereof, Lessee agrees to immediately remedy the violation at Lessee's expense.

12.23 Sublease and Assignment by Lessee. Lessee shall not assign or transfer its rights hereunder, in whole or in part, without the prior written consent of the City's CEO. Any attempt by Lessee to assign or transfer its interests in this Lease, in whole or in part, without such prior written consent of the CEO shall, at the CEO's sole and absolute discretion, terminate this Lease and all rights of Lessee hereunder. Such consent may be granted or denied at the sole and absolute discretion of said CEO. In the event of any assignment or transfer of the interests of Lessee, Lessee shall remain fully liable and responsible to the City for the performance of all of its duties

and obligations hereunder, including primary liability for the payment of rentals, rates, fees and charges hereunder. The CEO's approval of any sublease, assignment or other transfer hereunder shall not be unreasonably withheld or delayed.

12.24 Successors and Assigns. Subject to Section 12.23, this Lease shall be binding upon and inure to the benefit of the parties hereto, its successors and assigns.

12.25 Lessee to Maintain Its Corporate Existence. Lessee shall maintain its corporate existence, shall not dissolve or otherwise dispose of all or substantially all of its assets, and shall not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it, unless the surviving, resulting or transferee corporation, as the case may be:

- A. expressly assumes in writing all of the obligations of Lessee hereunder;
- B. is qualified to do business in the State of Colorado; and
- C. if such corporation is not organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia, delivers to the City an irrevocable consent to service of process in, and to the jurisdiction of the courts of, the State of Colorado with respect to any action or suit, at law or in equity, brought by the City to enforce this Lease.

12.26 Third Parties. This Lease shall not be deemed to confer upon any third party or parties (including Lessee's Operator but excepting parties to whom Lessee may assign this Lease in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any action or proceeding against either the City or Lessee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

12.27 United States Department of Transportation Provisions. This Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System, including the provisions of Appendix 1 which are incorporated herein by reference.

12.28 Use, Possession or Sale of Alcohol or Drugs. Lessee and its officers, agents and employees shall cooperate and comply with the provisions of Executive Order No. 94 and Attachment A thereto, as amended from time to time, or a successor executive order, 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 Lessee from the Lease Premises.

12.29 Waste or Impairment of Value. Lessee agrees that, except as otherwise provided in this Lease, nothing shall be done or kept in or on the Lease Premises which might impair the value of City property or which would constitute waste or a public or private nuisance.

ARTICLE 13: EXECUTION OF AGREEMENT

13.01 City Execution.

This Lease is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of the City. This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

13.02 Electronic Signatures and Electronic Records.

Lessee consents to the use of electronic signatures by the City. The Lease, and any other documents requiring a signature hereunder, may be signed electronically by the City 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.

END OF DOCUMENT; SIGNATURE PAGES, APPENDIX, AND EXHIBITS FOLLOW

Contract Control Number: PLANE-202263064-00
Contractor Name: DEN Fuel Company, LLC

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

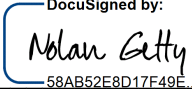
By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202263064-00
DEN Fuel Company, LLC

By:  _____
58AB52E8D17F49E...

Name: Nolan Getty
(please print)

Title: Chair, Fuel Committee
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPENDIX 1

**Standard Federal Assurances and Nondiscrimination
Non-Federal Contract Provision**

A5 CIVIL RIGHTS - GENERAL

A5.3.1 Clause that is used for Contracts

GENERAL CIVIL RIGHTS PROVISIONS

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

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The (**Name of Sponsor**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

A6.4 CONTRACT CLAUSES

A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements:

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.2 Title VI Clauses for Deeds Transferring United States Property

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project

constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

A6.4.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.4 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or

national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of

the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A17.3 SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [**Contractor** | **Consultant**] has full responsibility to monitor compliance to the referenced statute or regulation. The [**Contractor** | **Consultant**] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.3 CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of

the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

EXHIBIT A: DEN Fuel System Description



Denver International Airport

**Attachment to: Lease Agreement Between
DEN (The City) and DEN Fuel Company, LLC (Lessee)**

8/3/2022

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1.0 DESCRIPTION OF EXISTING FUEL SYSTEM FACILITIES

The Lessee must be familiar with the fueling system facilities at Denver International Airport (DEN). Below are general descriptions of the fuel system facilities. The leased assets of the Lessee includes, but is not limited to the Fuel Storage Facility, Hydrant Distribution System, and Remote Fueling facilities and areas outlined in the sections below.

1.1 Fuel Storage Facility

Fuel Receipt: The Fuel Storage Facility, as shown in Figure 1.1 has six 2,814,000-gallon fuel storage tanks. Fuel is received by a common carrier pipeline owned by Magellan Pipeline Company L.P. at the Pipeline Receipt area which does not need to be maintained by the Lessee. The valve immediately downstream of the inbound Pipeline Receipt area is the demarcation between Magellan Pipeline Company L.P.'s responsibility and the Lessee's responsibility for operation and maintenance. There are three offloading islands at the tank farm, each equipped with unloading hoses with bottom loading truck couplers and basket strainers. A common manifold directs the fuel from the truck receipt or pipeline receipt into any of the six fuel storage tanks.

Hydrant Pumping: The hydrant pump pad has sixteen 1,000-gallon-per-minute hydrant pumps which supply the hydrant distribution system via four 20-inch transfer lines. A hydrant cart test stand is used for testing and adjusting hydrant cart meters and controls. The hydrant cart test stand is designed to allow fuel flow from the hydrant pump discharger headers on the hydrant pad into the 20-inch manifold to the test stand.

Buildings: Two operations buildings are within the storage facility, Building 200 and Building 201. Building 200 includes offices, restrooms, locker-room facilities, break room, training room, and computer control room. Building 201 includes the foam tank room, maintenance area, quality-control laboratory, air compressor room for storage tank valves, restroom and a day tank room to supply fuel to the fire pumps in the foam room.

There are four oil water separators (OWS) at the facility. One of the OWS tanks is part of a process water treatment system located near the fuel storage facilities truck load equipment which includes an off load position, OWS and water storage tanks. In addition, there are three off-spec fuel tanks and a product recovery tank.

The Fuel storage facility also includes an Emergency Fuel Shut-off (EFSO) system associated with the Fuel System.



Figure 1.1 Fuel Facility Overview

1.2 Hydrant Distribution System

The hydrant distribution system per Figure 1.2 includes the transfer lines, isolation valve vaults, and hydrant pits. Four 20-inch, single wall steel, internally and externally coated Jet-A fuel lines feed the hydrant distribution system from the Fuel Storage Facility to the hydrant pits at each aircraft parking position. Low point drains and high point vent pits are installed for maintenance of the hydrant distribution system. There are three isolation valve vaults along the transfer lines and eleven isolation valve vaults along the east and west sides of the concourses. Each aircraft parking position has a prefabricated, fiberglass pit with an aircraft rated, cast aluminum hinged cover. Each pit contains the hydrant assembly consisting of a 6-inch manually operated butterfly valve, cone strainer, and hydrant valve.

The Fuel System includes an 8 inch line extending to parking positions on the east side of the United Airlines hangar. The Fuel System includes a 2 inch line extending to the Central Utility Plant at the Terminal as a back-up fuel source for the boilers.

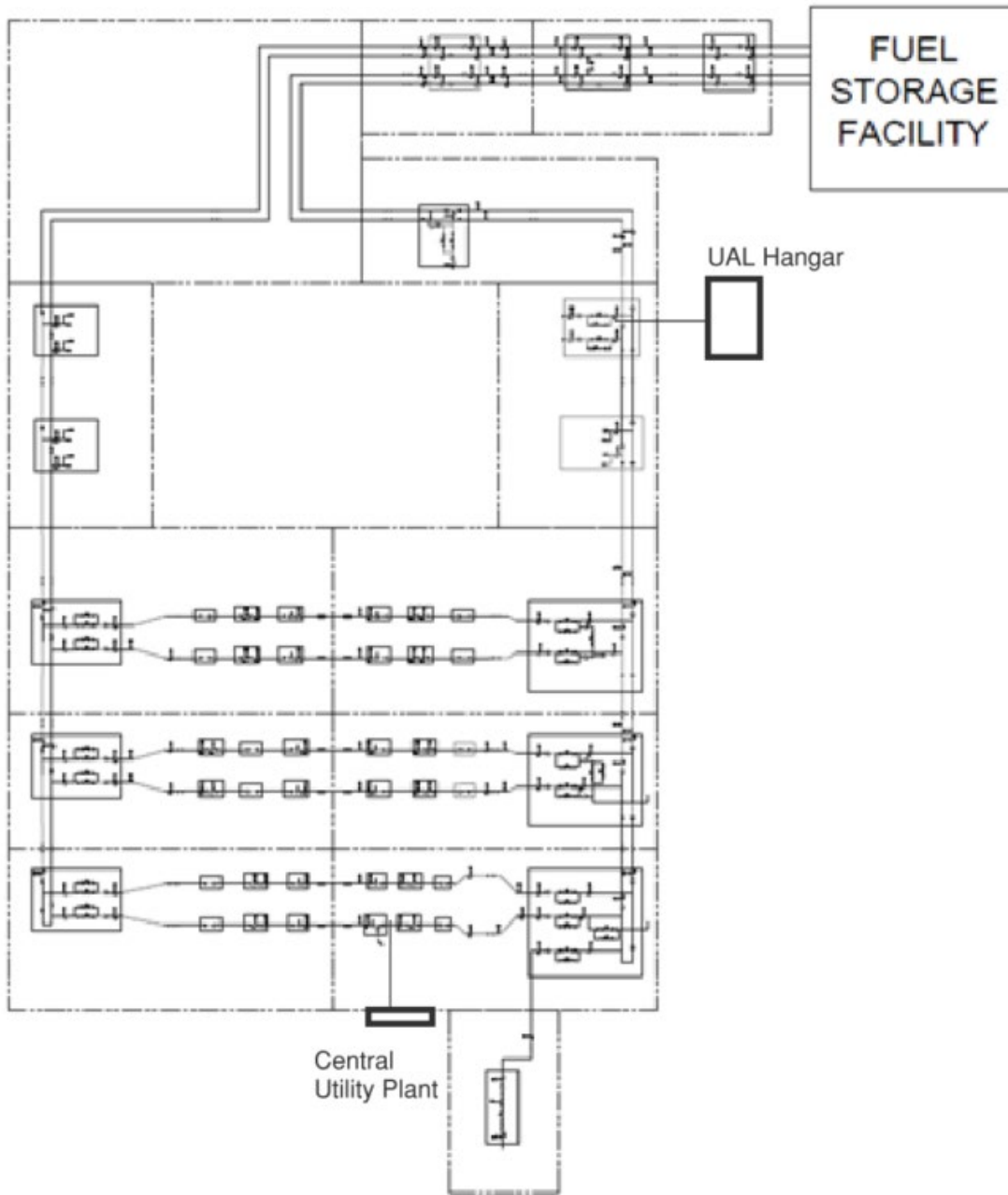


Figure 1.2 Hydrant Distribution System Flow Diagram

1.3 Remote Refueling

The Fuel System also includes remote truck load facility and Ground Service Equipment (GSE) fueling locations as shown on Figure 1.3.

Concourse A and Concourse B have two-position bottom load refueling commuter islands as well as general service equipment (GSE) islands to refuel ground equipment. Concourse C has only a GSE island.

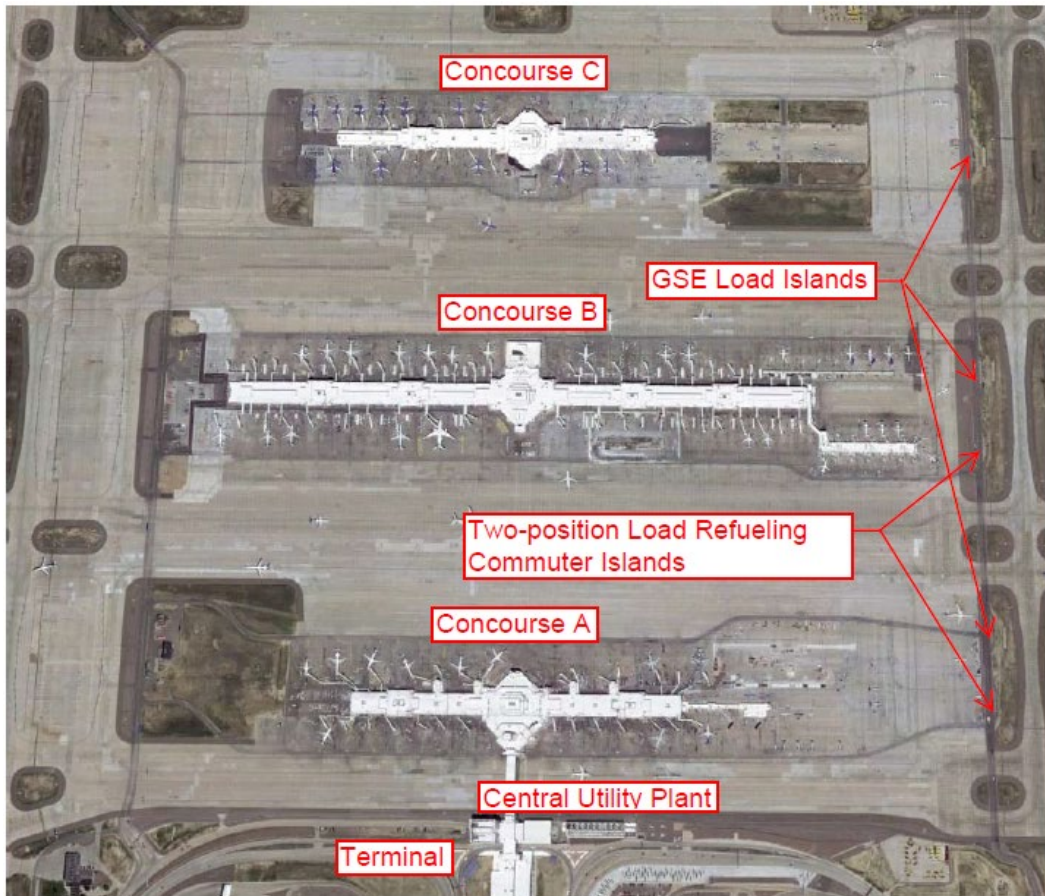


Figure 1.3 Concourse Overview

Per Figure 1.4, South Cargo has bottom loading capability with four refueler loading islands and an oil water separator. South Cargo is also equipped with two aviation gas islands and associated tank along with two GSE islands.

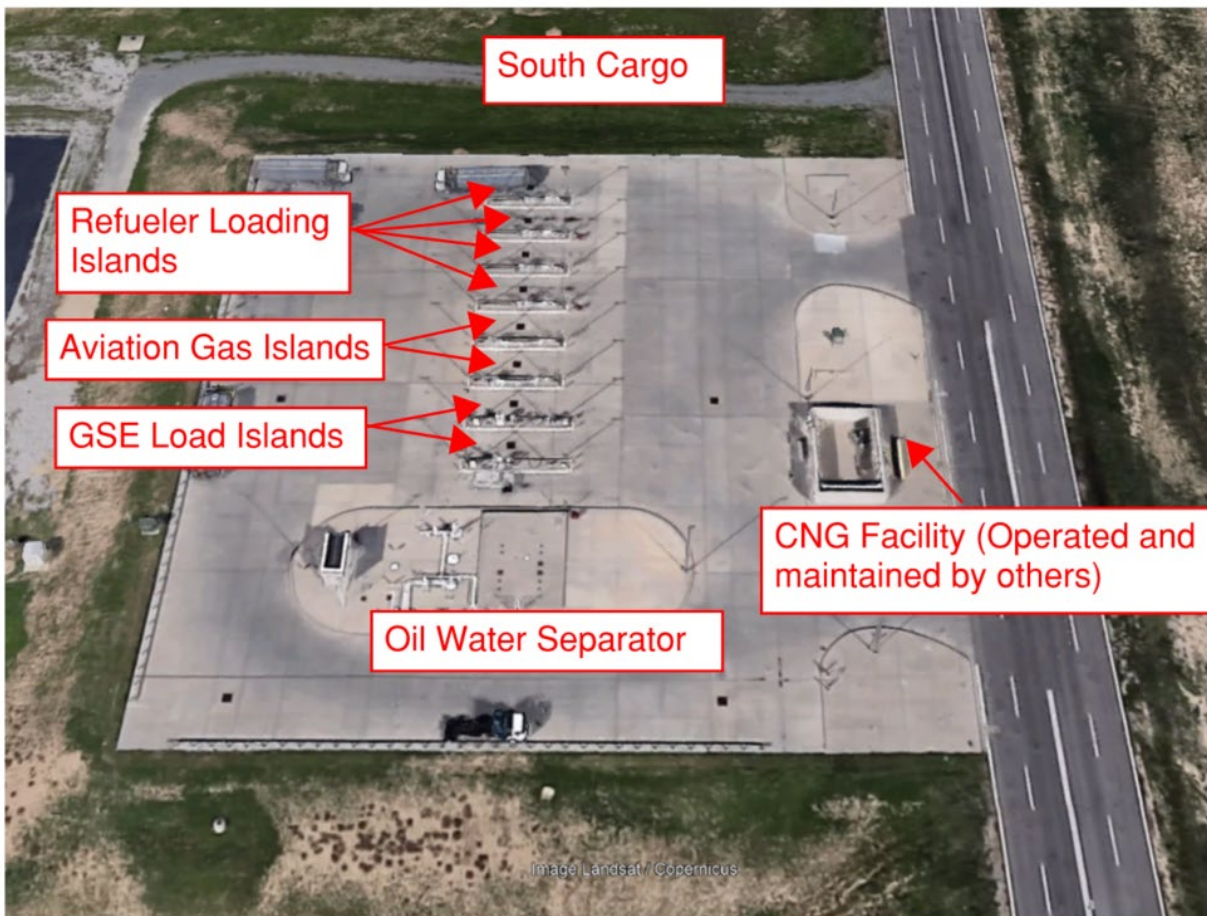


Figure 1.4 South Cargo Overview



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DRAFT

FUEL FARM

Note:

This drawing was prepared by DEN Planning & Design. For additional copies, or comments, please contact DEN Planning and reference file name below.

\\diagissom02\Planning\GIS\Airside\Projects\Airfield\11- Fuel Farm Fence Line\Fuel Farm Fence Line v1.1.dwg

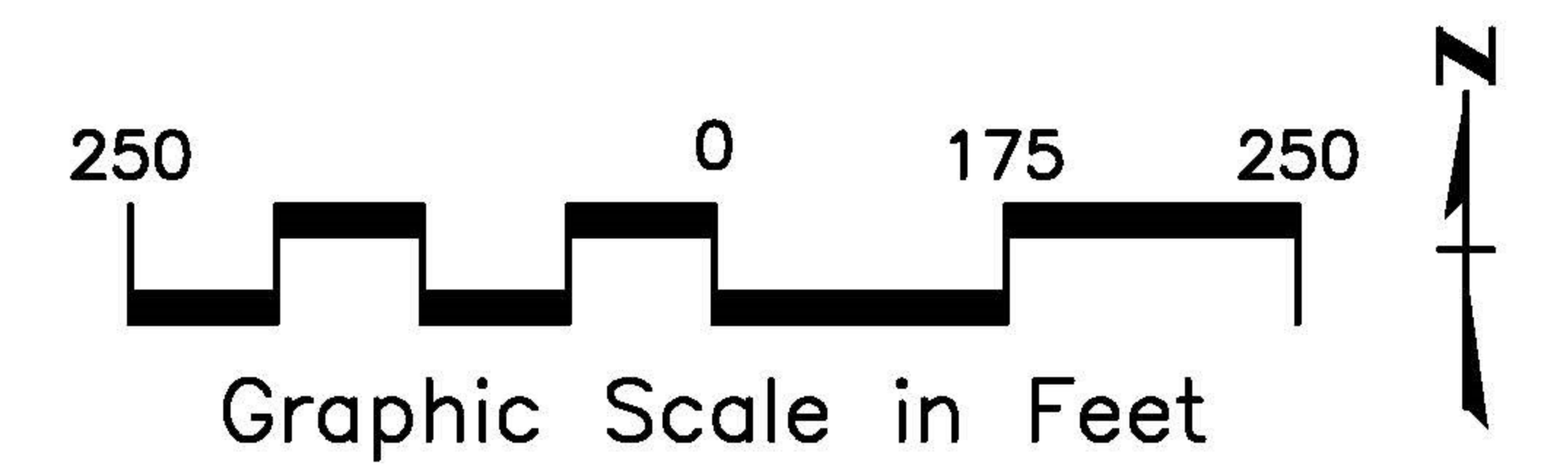


EXHIBIT C

DEN Approved Fuel System Projects

Attachment To:

Lease Agreement Between DEN (The City) and DEN Fuel Company, LLC (Lessee)

Exhibit C:

List of projects reviewed and approved by DEN and considered Tenant Capital Improvements for purposes of this Lease, as of August 2022.

Project List:

	Special Project Name
1	Cathodic Protection Upgrade – Fuel System Phase II
2	Enraf System/Software Upgrade
3	Controls System repair and maintenance
4	Water System repair and maintenance
5	Temperature and Vibration Implementation (2020 deferred)
6	Replace Corroded Steel Tank on Sump Truck
7	Engineering Study – Vault & MCC (2020 deferred)

***Fuel Storage Facility Tank Expansion Project:**

DEN acknowledges that DEN Fuel Company, LLC is planning to increase fuel capacity at the Fuel Storage Facility by adding fuel storage tanks to the east of the existing tank farm in the area shown in Exhibit B. Once DEN Fuel Company, LLC submits Plans for this project, DEN and the City will review these plans for approval.

EXHIBIT D

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
FUEL SYSTEM LEASE AGREEMENT**

A. Certificate Holder and Submission Instructions

Lessee 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: [insert specific DEN email address for the given contract]

- ACORD Form (or equivalent) certificate is required.
- Lessee 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 Lessee.

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. "Lessee" 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:

Lessee shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, terrorism, independent contractors, and products and completed operations in minimum limits of \$100,000,000 each occurrence, \$100,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$100,000,000 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:

Lessee 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 Lessee does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. If transporting waste, hazardous material, or regulated substances, Lessee shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

- d. If Lessee does not own any fleet vehicles and Lessee's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Lessee shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Lessee. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Lessee will be completing all services to DEN under this Agreement remotely, this requirement will be waived.
3. Workers' Compensation and Employer's Liability Insurance:

Lessee 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 Lessee 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 exemption status must be submitted with the Certificate of Insurance.
4. Pollution Legal Liability:

Lessee 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 \$25,000,000 each occurrence and \$25,000,000 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.
 - c. Subsequent to the Effective Date of the Lease, and upon satisfactory resolution of the Section 7.06 B. Environmental Baseline Audit findings, if any, and upon a certified passing result for the leak detection testing as required by Section 7.04 C., the City and the Lessee will meet and discuss a reduction in the coverage limit that is reflective of satisfaction of the environmental evaluations described above. Any reduction in the coverage limit agreed-to by the Parties would be based upon the performance of Lessee in operation of the Fuel System subsequent to the Effective Date, and would be effective upon the event of renewal of the then current coverage.
5. Property Insurance – Business Interruption Coverage:

Business Interruption Coverage in such amounts as will reimburse Contactor 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:

Lessee 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 Lessee carries property insurance on its personal property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

7. Property Insurance – Real Property:

Lessee shall maintain All-Risk Form Property Insurance, including terrorism, 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 for structures valued at or above \$1,000,000 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 Lessee and approved by the City. Cost of such appraisals shall be the sole responsibility of Lessee. Appraisal reports shall be submitted to the City upon issuance.
- c. Schedule of Premises Insured by Lessee:
[list specific description and addresses of buildings]

8. Builder’s Risk Insurance:

During the duration of any Lessee construction activity, Lessee shall ensure adequate coverage is provided for Builder’s 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 Lessee, 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 Lessee, 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. Lessee 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 Lessee 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. Lessee 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 each 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 policy(es) must follow form of the primary policies with which they are related to provide the minimum limits.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Lessee'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 (excluding Professional Liability, if required), Lessee'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.

If Lessee will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement will be waived specific to Workers' Compensation coverage.

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 coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar 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) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Lessee 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. Lessee shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Lessee will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Lessee cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Lessee agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Lessee's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Lessee.
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. Coverage required may not contain an exclusion related to operations on airport premises.
4. 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.
5. 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.

6. If the Lessee 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.
7. 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 coverage) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
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 Lessee 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 shall not act as a waiver of Lessee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Lessee is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to the required coverage and premium amounts.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Lessee shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Lessee's failure to maintain required insurance 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.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein are greater or broader than equivalent insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements herein shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management.

K. Insurance Requirements for Operator

At a minimum, Lessee shall require the Operator to be in compliance with the requirements stated in this Exhibit D, excluding Subsections C.7 and C.8.