

LEASE AND LICENSE AGREEMENT

THIS LEASE AND LICENSE AGREEMENT (“Agreement”), is made and entered into on the date set forth on the City’s signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”), on behalf of its Department of Aviation, and **OAK LEAF SOLAR 60 LLC**, a Colorado limited liability company (“**Operator**”).

WHEREAS, the City owns and operates Denver International Airport through its Department of Aviation (“**DEN**” or “**Airport**”), and Operator desires to obtain certain rights, services, and privileges in connection with the use of Airport property; and

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

WHEREAS, the City deems it appropriate and necessary in the public interest to have the System, which is owned by Operator, operated upon the Airport by the Operator; and

WHEREAS, the Operator and City will enter into a Power Purchase Agreement (“**PPA**”) outlining the terms of the purchase and sale of electricity produced by the System, Contract No. Jaggaer 202580623; and

WHEREAS, Operator hereby binds itself subject to the terms and provision of this Agreement to pay to the City the rentals and payments required herein and to otherwise perform all of the terms and conditions of this Agreement;

NOW THEREFORE, for and in consideration of the rentals and of the terms and conditions stated in this Agreement on the part of the Operator to be kept, observed and performed, the City does by these presents demise and lease or license to Operator, and Operator has agreed to take and does hereby take from the City, the Lease Premises and License Area (as defined below), as they may be improved, all upon and subject to the following terms and conditions:

PART I: DEFINITIONS

1.01 AUDITOR. “Auditor” shall mean the City’s Auditor and authorized representatives.

1.02 BUILDING CODE. “Building Code” shall mean the current Building Code for the City and County of Denver, which is based on the codes developed by the International Code Council (“**ICC**”).

1.03 CHIEF EXECUTIVE OFFICER OR CEO. “Chief Executive Officer” or “CEO” shall mean the Chief Executive Officer of Denver International Airport, also sometimes referred to in the City’s Charter and Code as the Manager of Aviation.

1.04 COMMENCEMENT DATE. “Commencement Date” shall mean the date Operator achieves notice of commercial operation established and memorialized by a written notice issued by Operator and addressed to the Project CEO, and acceptance of the System and Facilities, which is expected to be about December 31, 2027, and shall be established and memorialized by a written notice issued by the Project Manager and addressed to Operator.

1.05 COMMERCIAL OPERATION. means the condition existing when the Generating Facility is (i) mechanically complete, has been tested, and is operating as specified in the design documents, and (ii) energy is delivered through the Generating Facility’s meter and to the Site’s electrical system under an approved and executed Utility interconnection agreement.

1.06 DEN DESIGN STANDARDS. “DEN Design Standards” shall mean the design standards and criteria for the Airport, including as they may be amended.

1.07 DEN DEVELOPMENT GUIDELINES. “DEN Development Guidelines” shall mean the tenant development guidelines and criteria established for Airport tenants and Operators for design, construction, installation, signage, and related matters, and as they may be amended from time to time.

1.08 DEN ENVIRONMENTAL GUIDELINES. “DEN Environmental Guidelines” shall mean the environmental standards and criteria established for tenant operators at the Airport, and as hereafter amended, to the extent they apply to this project.

1.09 EFFECTIVE DATE. “Effective Date” shall mean the date the City executes this Agreement, as stated on the City’s signature page below.

1.10 EPC PROVIDER. “EPC Provider” shall mean the contractor selected by the Operator to design and construct the Generating Facility.

1.11 FACILITIES. The “Facilities” shall mean the interconnection run located in the License Area, which will deliver power generated by the System to Points of Common Coupling designated as the point of power delivery. The Facilities excludes the System, and includes all Site Improvements not located on the Lease Premises.

1.12 LAND. “Land” shall mean the real property depicted on Exhibit A attached hereto. The City expressly reserves from the Land all oil, gas, and other mineral rights, air rights, and any water rights.

1.13 LEASE PREMISES. “Lease Premises” shall mean the portion of the Land upon which the System is installed, as legally described on Exhibit B-1 and generally depicted on Exhibit B-2, and containing the number of acres, more or less, as set forth therein. The Lease Premises specifically do not include the License Area.

1.14 LICENSE AREA. “License Area” shall mean the portion of the Land indicated in Exhibit C which may be used for the Facilities.

1.15 PAST DUE INTEREST RATE. “Past Due Interest Rate” shall mean interest accruing at one percent (1%) per month commencing on the fifth calendar day after the date such amount is due and owing until paid to the City.

1.16 POINT OF COMMON COUPLING. A “Point of Common Coupling” shall have the meaning given this term in Xcel Energy’s Interconnection Agreement, and Xcel’s “Safety, Interference, and Interconnection Guidelines For Co-generators, Small Power Producers and Customer-Owned Generation,” which definition is sourced from CPUC 3667 Rules and IEEE 1547.

1.17 POWER PURCHASE AGREEMENT OR PPA. “Power Purchase Agreement” or “PPA” shall mean that certain Power Purchase Agreement of even date herewith, between Operator as Power Provider, and the City as Purchaser.

1.18 SITE IMPROVEMENTS. “Site Improvements” shall mean all initial construction and any improvements on the Land, as well as any other improvements outside of the Land but on Airport property, including access roadway improvements, drainage improvements, utility, and System interconnects, as described in Exhibit B-2 attached hereto, and any future improvements approved by the CEO and constructed by Operator pursuant to terms of this Lease.

1.19 SYSTEM. “System” shall mean the solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, and related utility interconnections installed by Operator on the Lease Premises and part of the photovoltaic power generating system owned and operated by Operator. The System excludes the Facilities.

1.20 OPERATOR'S EQUIPMENT. “Operator's Equipment” shall mean personal property and equipment, and signs used in the operation of the business of Operator on the Land but not specifically part of the System or Facilities.

PART II: GENERAL

2.01 CONSIDERATION.

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

2.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS, AND ADDENDA.

The Exhibits and Addenda as described and attached to this Agreement are incorporated into this Agreement by reference.

2.03 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT.

A. The Parties agree that acknowledgement of no objection from the Federal Aviation Administration (“FAA”) of the plans for the System and Facilities, and any other required FAA or other regulatory approvals, shall be conditions precedent to the effectiveness of this Agreement.

B. Operator shall timely acquire all necessary federal, state, local, and airport permits, and comply with all permit requirements, including but not limited to any required site access permits, FAA 7460s, or other approvals. Operator understands that activities involving vehicles, equipment, or other items taller than twenty feet (20') may require FAA review and approval, and Operator is responsible to allowing sufficient time for such review to occur.

PART III: LEASE PREMISES AND LICENSE AREA

3.01 SUBJECT TO EXISTING RIGHTS.

A. The rights and privileges granted in this Agreement are subject to prior easements, rights of way, and other matters affecting title to the Land. The Land is expressly subject to an aviation easement hereby reserved to the City and the Airport for the flight of aircraft over the Land. Should any easements or rights of way to the Land that would prevent Operator's performance hereunder or under the PPA materialize at some future date, the City agrees to resolve and work around such matters at its sole cost and expense.

B. It is understood that the use of Land 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 agency having jurisdiction over the Land. The Land's current zoning code designation specifically allows energy production.

3.02 LEASE RIGHTS GRANTED; USE OF LEASE PREMISES.

The City hereby grants to Operator the right to construct upon, occupy, and use the System on the Lease Premises, consistent with and subject to all of the terms and provisions of this Agreement. Operator shall have the right to construct upon and use the Lease Premises solely for the installation and operation of the System and related services. The Lease Premises shall be utilized for no other purposes, unless otherwise authorized in writing by the CEO.

3.03 LEASE RIGHTS NOT EXCLUSIVE.

The City reserves the right to grant to other tenants the right to provide the same or similar services as described on the Summary Pages at other locations at the Airport and in the City; provided, however, that such grant to other tenants shall not interfere with Operator's rights hereunder or Operator's ability to perform as under the Power Purchase Agreement. Operator expressly understands and agrees that although it has the exclusive right to produce solar energy on the Lease Premises, its rights to produce solar energy elsewhere in the Airport or in the City and County of Denver are not exclusive.

3.04 LICENSE RIGHTS GRANTED.

A. License Area. In addition to the Lease Premises, the City hereby grants to Operator, subject to the conditions and terms hereinafter contained, a revocable non-exclusive license to install, operate, and maintain the Facilities, for distribution of electricity from the System to a Point of Common Coupling. The Facilities shall be constructed on the License Area depicted in Exhibit

C. Such license may only be revoked by the City during the Term in conjunction with (1) a relocation of the Facilities in accordance with Section 3.05 of this Agreement, or (2) a termination of this Agreement in accordance with Section 4.02.A of this Agreement, or (3) the Default and Remedies provisions of Section 10 of this Agreement.

B. Access to License Area. Notwithstanding any other provision of this Agreement, DEN may temporarily deny access to any portion of License Area that is located within or adjacent to the Airport Operations Area either at the time of execution of this Agreement or as may be designated by DEN in the future (a/k/a the “**AOA**” or “inside the fence”). DEN may deny all access as required by, *inter alii*, the FAA, Transportation Security Administration (“**TSA**”), other safety or regulatory entity, or in any circumstance in which DEN Operations limits access to all or part of the AOA.

C. Request access. Operator agrees to coordinate its work performed on the License Area with the operational requirements of the Airport, and all work movement of persons and equipment on areas used by aircraft shall be subject to regulations and restrictions established by the Airport authorities. Access of people and equipment to the License Area shall be in accordance with instructions received from DEN. For activities during the Term requiring surface access only, Operator shall notify DEN at least forty-eight (48) hours prior to the start of any work. DEN will provide any necessary instructions regarding access logistics within a reasonable time after the Operator gives such notice. No access fee is required for such activities.

D. License Area not Exclusive. The license granted is not exclusive, and the City specifically reserves the right to grant such other licenses, rights, or privileges across, on, or pertaining to property within the License Area to such persons and for such purposes as City may, in its sole discretion, select, so long as it does not unreasonably interfere with Operator’s rights under this Agreement. Operator understands that the License Area is located in an existing utility corridor.

3.05 RELOCATION.

Operator agrees that it will relocate the Facilities and/or the System to a new location provided by City if such relocation is determined by the CEO to be necessary for Airport purposes. The new location shall be suitable alternate land for the purposes of the Facilities and/or System. City will pay to Operator a relocation reimbursement equal to the actual reasonable removal, reinstallation, interconnection expenditures, and all documented costs of deployment and lost revenues, to be calculated in conformity with Section 4.02B of this Agreement incurred by Operator for such relocation and connection. Operator shall make such relocation, promptly and all applicable terms and conditions of this Agreement shall apply to the new location.

3.06 CITY RESERVATION; NO INTERFERENCE.

The City reserves for itself the right to install utilities upon areas of the Land as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant easements in areas of the Land for the installation of utilities, provided that the use of such areas

or the grant of such easements does not unreasonably interfere with the Operator's operations and use of the Land. The Operator shall not be entitled to any compensation or abatement of rent if the use of such areas or the grant of such easements does not unreasonably interfere with the Operator's operations or use of the Land. Notwithstanding the above, and notwithstanding the System and Facilities' presence as a fixture on the Land, the City represents to Operator that the City has legal title to the Land and that there are no circumstances known to the City and no commitments to third parties that may damage, impair, or otherwise adversely affect or interfere with the System or its function by blocking the System's insolation and access to sunlight; furthermore, the City covenants that the City shall not cause or permit any such interference with the System's insolation and access to sunlight. The Operator is aware that the System and Facilities will be serving and is in close proximity to the DEN Aircraft Fire Training Facility. Operator expressly declares that neither Operator nor any related entity shall ever file a claim against the City based on the operation of the Aircraft Fire Training Facility.

3.07 MEANS OF ACCESS.

Operator, its agents and employees, have a non-exclusive right of ingress to and egress from the Land by a means of access located outside the Land as specified by the City. The City may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or other right-of-way for such access, ingress and egress, and any other area at the Airport or in its environs presently or hereafter used as such, so long as there is reasonable access, ingress and egress available to the Land except in the case of severe snow storms, other extreme and materially adverse weather conditions, and any increased security alerts. Operator hereby releases and discharges the City of and from any and all claims, demands or causes of action which the Operator may at any time have against the City arising or alleged to arise out of the closing of any roadway or other right-of-way for such access, ingress and egress or other area at the Airport or in its environs used as such, so long as reasonable and proper notice of such modification was given by the City to Operator, and reasonable access, ingress and egress is available after any such modification.

3.08 RIGHT OF INSPECTION.

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

PART IV: TERM AND TERMINATION

4.01 TERM.

This Agreement shall become effective as of the Effective Date. However, the Term of this Agreement shall commence on the Commencement Date and shall terminate Twenty-Five (25) years after that date (“**Term**”), unless this Agreement is terminated earlier pursuant to the terms of the Agreement.

4.02 TERMINATION OF AGREEMENT BY CITY FOR AVIATION PURPOSES.

A. The City reserves the right to terminate this Agreement for the purpose of implementing any master plan for development or expansion of the Airport. In the event the CEO determines that the City requires use of all or any portion of the Land for Airport purposes during the Term, and such Airport purposes require termination of the Agreement, the City shall have the right to terminate this Agreement upon six (6) months prior written notice to Operator.

B. If such notice is provided under this paragraph, then the City, at its option, may offer to Operator comparable and suitable alternate land which shall to the extent possible be similar to the property as to size and general location and access to sunlight, and provided Operator is not in default beyond any applicable notice and cure period, shall pay to Operator a relocation reimbursement equal to the actual reasonable removal, reinstallation, interconnection expenditures and all documented costs of deployment incurred by Operator for such relocation, should Operator, in its reasonable discretion, agree to such relocation. In such instance when the City requires relocation, the City shall pay to Operator, in addition to other amounts set forth in this section, a monthly payment (prorated as needed) equal to the estimated energy production per PVWatts v2 or latest version; multiplied by: the summation of (1) the Purchase Price for Energy set forth in Section 4 of the Power Purchase Agreement, plus (2) the price of RECs paid by Xcel Energy per the So-REC Purchase Contract, for the period of time during which the System and Facilities are not in Commercial Operation due to the relocation.

C. In such instance when the City requires termination of the Agreement for Airport purposes as defined above rather than relocation, the City shall be responsible for all associated costs of system removal and payment of the Termination Value in **Exhibit D**.

4.03 HOLDING OVER.

If Operator holds over after termination of this Agreement, thereafter Operator's occupancy shall be at sufferance but otherwise Operator shall be bound by all terms and conditions as herein provided in the absence of a written agreement to the contrary. Nothing herein shall be construed to give Operator the right to hold over at any time, and the City may exercise any and all remedies at law or in equity to recover possession of the Land, as well as any damages incurred by the City.

4.04 SURRENDER OF LEASE PREMISES AND LICENSE AREA.

A. Upon the expiration or earlier termination of this Agreement not otherwise falling under Section 4.02, or on the date specified in any demand for possession by the City after any default by Operator, Operator covenants and agrees that, at the City's sole option:

1. The City shall elect to purchase the System and Facilities in accordance with the terms of this Agreement; or
2. If the City is not in default under the Power Purchase Agreement beyond any applicable notice and cure period, then at Operator's expense Operator shall remove the System and Facilities or such portion thereof as is specified by the CEO, within one hundred twenty (120) days of such expiration or termination or within such additional time as is granted by the CEO; or
3. If termination of this Agreement is due to the default of City, and the City elects not to purchase the System and Facilities, the City shall be responsible for removal costs for the System and Facilities.

B. If all or any portion of the System and Facilities are removed as requested by the City, Operator shall, at Operator's expense, restore the Land to conditions existing prior to the installation of such improvements or applicable portions thereof, and upon failure to do so the City may cause such removal and restoration to be done at Operator's expense.

4.05 OPTION FOR PURCHASE OF SYSTEM AND FACILITIES.

A. On the sixth, tenth, fifteenth, and twentieth anniversary of the Commencement Date, and at any time thereafter, the City may elect, in its sole discretion and at its sole option, to purchase the System and Facilities from the Operator, including all rights, privileges, and contracts held by the Operator. If the City elects to purchase the System and Facilities prior to the Expiration Date, the City shall pay to the Operator the then Fair Market Value. Not less than ninety (90) days prior to the projected date for exercise of the purchase option, the City shall provide written notice to Operator of the City's desire to determine the Fair Market Value of the System and Facilities. The City shall not elect to exercise its Purchase Option until after a Fair Market Value has been determined. Upon the exercise of the foregoing Purchase Option plus receipt of the Fair Market Value, and all other amounts then owing by the City to Operator, the parties will execute all documents necessary to cause title to the System and Facilities to pass to the City as-is, provided, however, that Operator shall remove any encumbrances placed on the System and Facilities by the Operator. The "Fair Market Value" of the System and Facilities shall be the value determined by mutual agreement of the City and Operator within thirty (30) days of the City's notice and desire to determine the Fair Market Value pursuant to this Section.

B. If the City and Operator cannot mutually agree to a Fair Market Value, then the parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written

opinion delivered to the parties. The valuation made by the appraiser shall be the price at which the City may, in its sole discretion, determine to exercise its Purchase Option. The costs of the appraisal shall be borne by the parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System and Facilities will be transferred from Operator to the City at no cost to the City. If the parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two appraiser firms proposed by each party. Upon any such purchase of the System and Facilities by the City, Operator shall convey all its title, ownership rights, and any other interests Operator holds in the System and Facilities and the renewable energy credits and certificates and other revenues related to the System and Facilities. Such purchase and assignment shall be conditioned upon the consent of Public Service Co. of Colorado d.b.a. Xcel Energy to the transfer and assignment of the Solar Rewards SO-REC Purchase Contract and any related agreements between the Operator and Public Service Co. of Colorado d.b.a. Xcel Energy. In order that the City may make an informed decision regarding whether to purchase the System and Facilities, the Operator shall annually provide all operating and maintenance records of the System and Facilities. Throughout its term of ownership of the System and Facilities, the Operator shall keep, or cause to be kept, and be made available to City, accurate and complete operation and maintenance records.

PART V: COMPENSATION AND PAYMENT

5.01 COMPENSATION.

A. Lease Premises.

1. Operator agrees to pay DEN for use of the Lease Premises a ground rent at the rate of **Eight Hundred and Ten Dollars (\$810.00)** per acre per year (“**Ground Rent**”).
2. Operator shall pay DEN a pro-rated per diem amount of the Ground Rent for the period from the Effective Date to December 31 of the same calendar year of the Effective Date. This payment is due 10 days after the Effective Date.
3. Beginning January 1 of the calendar year following the year in which the Effective Date occurs, Operator shall pay the full annual Ground Rent to DEN on the first business day following January 1, and shall continue such payments annually during the effectiveness of this Agreement.
4. For each annual Ground Rent payment due after the calendar year in which the Effective Date occurs, the Ground Rent shall increase by two percent (2%) over the previous year’s Ground Rent. The Ground Rent shall be paid in advance and without demand, subject to DEN’s right to reestablish said Ground Rent under Section 5.05 of the Agreement.

B. License Area.

1. Operator agrees to pay DEN for use of the License Area a fee of **Twenty-Five Hundred Dollars (\$2,500.00)** per year (“**License Fee**”).
2. Operator shall pay DEN a pro-rated per diem amount of the License Fee for the period from the Effective Date to December 31 of the same calendar year of the Effective Date. This payment is due 10 days after the Effective Date.
3. Beginning January 1 of the calendar year following the year in which the Effective Date occurs, Operator shall pay the full annual License Fee to DEN on the first business day following January 1, and shall continue such payments annually during the effectiveness of this Agreement.
4. For each annual License Fee payment due after the calendar year in which the Effective Date occurs, the License Fee shall increase by two percent (2%) over the previous year’s License Fee. The License Fee shall be paid in advance and without demand, subject to DEN’s right to reestablish said License Fee under Section 5.05 of the Agreement.

5.02 INTEREST ON PAST DUE AMOUNTS.

Any payments not made to the City within five (5) business days after the date such amount is due and owing shall accrue interest at the past due interest rate, as herein defined.

5.03 PLACE AND MANNER OF PAYMENTS.

The Ground Rent, License Fee, and other compensation payable to the city hereunder shall be made payable to “Airport System Fund” without notice at the following:

Denver International Airport
P.O. Box 492065
Denver, Colorado 80249-2065

or at such other place as DEN may designate by notice in writing to Operator. All sums shall be payable in legal tender of the United States. Any check provided to the City will be accepted on condition that it clears, and Operator agrees to pay any charges, fees, or costs City incurs in collecting payment, including reasonable attorney’s fees.

5.04 EXAMINATION OF RECORDS AND AUDITS.

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, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during

reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, 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 audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

5.05 REESTABLISHMENT OF RENTALS, FEES, AND CHARGES.

A. The City, through the CEO, may, from time to time, at the CEO's sole discretion and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees, and charges provided for herein. The City agrees that such right shall not be exercised prior to the fifth anniversary of the Commencement Date, and such reestablished schedule of rentals, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of the airport system.

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

C. No failure by the City to reestablish the rentals, fees, and charges at a five (5) year interval date shall constitute a waiver of the City's right to reestablish the rentals, fees, and charges at any time thereafter.

PART VI- CONSTRUCTION AND INSTALLATION OF SYSTEM AND FACILITIES

6.01 CONSTRUCTION OF SYSTEM, FACILITIES, AND ANY OTHER SITE IMPROVEMENTS.

Operator shall, at its sole cost, construct and install the System, Facilities, and any other Site Improvements in full compliance with approved plans and specifications and the requirements of Exhibit E, as hereinafter provided.

6.02 APPROVAL OF PLANS AND SPECIFICATIONS.

A. As more fully described in **Exhibit E** attached, full and complete plans and specifications for all work, site development, facilities, and improvements, and a schedule of the time required to complete same, shall be submitted to DEN for review and written approval, with such review and written approval to be issued in a reasonably timely manner. The plans and specifications shall be separately submitted to the City's Building Inspection Division for consolidated review by the Building Inspection and Fire Department.

B. First-class standards of design and construction shall be required in connection with all such work, facilities, and improvements, and all improvements shall conform with applicable statutes, FAA approval requirements, ordinances, building codes, regulations, DEN Design Standards, DEN Development Guidelines, and DEN Environmental Guidelines and other general requirements of the Airport and the City. The approval given by the City shall not constitute a representation or warranty as to such conformity nor does the City warrant the suitability of the site for the Operator's operations; responsibility therefore shall at all times remain with Operator.

6.03 CONSTRUCTION PERIOD.

Operator shall complete the construction and installation of the System and Facilities and Site Improvements no later than December 31, 2027 ("**Construction Period**"). The Construction Period shall be extended by the CEO if completion of the System and Facilities or Site Improvements was delayed through no fault of Operator. Notwithstanding the foregoing, in no event shall construction delays affect the date upon which compensation is due. The City shall inspect the construction and perform acceptance tests to demonstrate System and Facilities output and proper performance of System and Facilities interconnection.

6.04 COORDINATION OF CONSTRUCTION.

A. Operator shall cooperate with the City and its planners, designers, architects, and engineers in the construction and installation of the System, Facilities, or other Site Improvements on the Land and comply with the approved plans and specifications of the Building Code, and to the extent applicable the DEN Development Guidelines. Operator recognizes that during its Construction Period construction may also occur in adjacent areas surrounding the Land, and Operator agrees to monitor construction in adjacent areas and coordinate the work of its contractors with the construction, scheduling, and construction staging occurring in adjacent areas.

B. Operator shall prevent activities associated with the construction or installation of the System and Facilities at the Airport from interfering with travelers, other businesses, or Airport operations, and such activities may be required to be accomplished during off hours, in whole or in part, requiring overtime payments to workers.

C. Operator shall be responsible for all utilities needed during construction.

D. Operator or its contractor shall at all times keep the construction site and surrounding area in a clean, orderly, and safe condition free of accumulated construction debris

and waste materials, and shall be responsible for removal of all construction debris and waste materials to a suitable licensed landfill off DEN property.

E. All construction work, materials, and installations involved in or incidental to the construction on the Land shall be subject at all times to inspection and approval by the City. The City shall at all times have the right of access to the Land to monitor and inspect the construction of the Site Improvements to ensure that such improvements are constructed and installed in compliance with the approved plans and specifications.

F. The City shall have the right to halt construction or deny access to the Land at any time if such construction is at material variance from the approved plans and specifications until such material variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such material variance or impediment to the safe operation of the Airport so as to permit continuation of construction as expeditiously as possible.

6.05 ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION.

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

1. Environmental Control. Operator shall comply with the requirements under DEN's Technical Specifications Section for Environmental Controls and Temporary Erosion and Sedimentation Control.
2. Air Pollution. If required by law, Operator shall obtain a fugitive dust permit from the Colorado Department of Health and Environment.
3. Stormwater Permit. If required by law, Operator shall obtain a construction stormwater permit from the Colorado Department of Health and Environment.
4. Soil Erosion and Sedimentation Control. Operator shall submit a plan for the City's review and approval pertaining to proposed measures to control soil erosion and sedimentation during construction. The plan shall comply with Technical Specification for Temporary Erosion and Sedimentation Control. These specifications address topsoil stripping, soil stockpiling, runoff control, sedimentation (traps), air and water pollution, maintenance, and inspection. Operator shall implement prudent industry practices in preventing soil erosion and controlling sedimentation.
5. Solid and Hazardous Waste Controls. Operator is responsible for minimizing the amount of "solid" and hazardous waste generated during construction activities. "Solid waste" is defined as all putrescible and non- putrescible solid,

semi-solid and liquid wastes, but does not include hazardous waste. An attempt should be made to recycle generated waste. Disposal of waste shall be used as a last resort. Operator is responsible for the safe disposal of all solid and hazardous waste and shall dispose of such waste in accordance with all applicable laws, regulations and ordinances.

B. Operator shall minimize the land disposal of construction waste to the maximum extent practicable. Activities under this provision include the recycling of rebar, concrete, oil, asphalt, and drywall.

C. Noise and Vibration Control. Operator shall comply with all noise and vibration control requirements of Denver International Airport Technical Specification Section 01566.

6.06 AS-BUILT DRAWINGS.

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

6.07 BUILDING PERMIT.

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

6.08 CONSTRUCTION BONDS.

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

6.09 CONSTRUCTION INSURANCE.

Operator agrees to secure, or require each contractor to secure, and to keep in full force and effect during the construction period and until completion of the System, Facilities, and Site Improvements, the insurance policies described in the City's form of insurance certificate which

is attached to this Agreement as **Exhibit G** and incorporated herein. Upon execution of this Agreement, Operator shall submit to the City a fully completed and executed ACORD form which specifies the issuing company or companies, policy numbers, and policy periods for each required form of coverage.

6.10 LIMITATION ON LIABILITY.

A. Operator agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Operator, or any other person or party, on account of the construction or installation of the System and Facilities, and any Site Improvements or other improvements to or upon the Airport made by Operator. Operator agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or Airport operations, including, without limitation, damages or losses in the nature of delay damages, lost labor productivity, and impact damages.

B. The City agrees that no liability shall attach to Operator as a result of any City-caused interference or delay, or City-caused injury to a City or third-party employee allowed on the Land by the City. In no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages, lost profits, or business interruption damages, by statute, in tort, contract, or otherwise.

6.11 COMPLIANCE WITH ALL LAWS AND REGULATIONS.

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

6.12 PREVAILING WAGE.

A. To the extent required by law, Operator shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the payment of D.R.M.C. §§ 20-76 through 20-79 ("**Prevailing Wages Ordinance**"). As this agreement was not advertised nor subject to an RFP, it is required that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date funds for this Agreement were encumbered.

1. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.

2. Operator shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.
3. Operator shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.
4. Operator shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Auditor by calling (720) 913-5000 or emailing: auditor@denvergov.org.
5. If Operator fails to pay workers as required by the Prevailing Wage Ordinance, Operator will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Operator fails to pay required wages and fringe benefits.

6.13 COMPLIANCE WITH DENVER WAGE LAWS.

To the extent applicable to the Operators's provision of services hereunder, the Operator shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding D.R.M.C. Sections 58-1 through 58-26 ("**Minimum Wage and Civil Wage Theft Ordinances**"), including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Operator expressly acknowledges that the Operator is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Operator, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

6.14 RESTRICTION ON CHANGES AND ALTERATIONS.

Operator agrees not to materially improve, change, alter, add to, remove, or demolish all or any of the System and Facilities or Site Improvements without the prior written consent of the CEO. Operator must comply with all conditions which may be reasonably imposed by the CEO. Full and complete specifications for all work and material improvements, along with a statement of the time required to complete such work shall be submitted to, and approved in writing by, the CEO within fourteen (14) calendar days of submission and before construction work commences. Plans for all changes or alterations shall be given to the Project Manager for review and written approval prior to commencement of construction. After City's final approval, City shall return to Operator an approved copy for its records.

6.15 TITLE TO IMPROVEMENTS; TITLE TO SYSTEM AND FACILITIES

Operator agrees that all improvements to the Land or other Airport property, including approved changes and renovations, which are affixed to the realty, shall become the property of the City upon their completion and acceptance by the City. The City agrees that notwithstanding the foregoing, and notwithstanding the System's and Facilities' presence on the Land, Operator shall retain title to and be the legal and beneficial owner of the System and Facilities, and the System and Facilities shall remain the personal property of Operator or Operator's assigns until such time as the City purchases the System and Facilities. The City consents to Operator recording a memorandum of this Agreement in the land registry or title records of the county where the Land are located or other applicable government office. Operator shall be entitled to, and is hereby authorized to, file one or more precautionary financing statements or fixture filings in such jurisdictions as it deems appropriate with respect to the System and Facilities in order to protect Operator's rights in the System and Facilities. The City expressly denies any ownership, interest, operation, responsibility, or liability for the installation, operation, or maintenance of the System and Facilities or the Operator's Equipment at any time during the Term.

PART VII- OPERATION AND USE OF LEASE PREMISES

7.01 OPERATIONS.

A. Operator shall use commercially reasonable efforts to operate the System and Facilities in accordance with the interconnection agreement and any Solar*Rewards SO- REC Contract, each by and between Operator and Public Service Co. of Colorado.

B. Upon reasonable prior written notice, duly authorized representatives of governmental entities shall be allowed access to the Land for inspection purposes. Operator agrees to obtain, at its own expense and maintain at all times, all licenses and certificates necessary for its operations on the Land.

C. Safety and Security: The Airport requires personnel badging and vehicle permitting pursuant to federal regulations of the TSA and FAA. Operator shall be required to obtain and pay for all required access authorizations, background checks, badges, and permits. If required, Operator shall establish and maintain a secured (fenced) perimeter at its primary operations area and escort or provide escort for all vendors and suppliers requiring access to the Land. The parties agree that no secured (fenced) perimeter is required as of the Effective Date. Operator reserves the right to establish and maintain a secured (fenced) perimeter in the future should Operator determine such a perimeter necessary.

7.02 HOURS OF OPERATION.

Except for scheduled maintenance outages and emergency situations, Operator agrees to keep its System and Facilities in operation during all daylight hours, unless otherwise authorized in writing by the CEO.

7.03 CARE OF AREA.

Operator agrees that it will keep the Land in a neat, clean, safe, sanitary and orderly condition at all times, and free of all paper, rubbish, spills, and debris. Operator, at its own expense, shall collect and deposit all trash and refuse at frequent intervals from the Land.

7.04 COMPLIANCE WITH ALL LAWS AND REGULATIONS: OPERATIONS.

Operator understands that Section 6.11 applies to all actions governed by this Agreement throughout the Term, and understands that it must meet the requirements of all applicable laws, including the Prevailing Wage Ordinance, Minimum Wage Ordinance, and Small Business Enterprise, Disadvantaged Business Enterprise, and Minority and Women-owned Business Enterprise requirements.

7.05 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.

A. Operator, in conducting any activity on the Land, shall acquire all necessary federal, state, local, and airport permits and comply with all requirements of such permits and comply with the requirements of **Exhibit F** attached hereto, regarding the storage, use, and disposal of hazardous materials, petroleum products, or any other substance.

B. The City shall have a right of access to the Land without prior notice to inspect the same to confirm that Operator is using the Land in accordance with this Agreement. In the event the City's inspection of the Land reveals evidence of a potential non-compliance with the terms of this Agreement, at the City's request, Operator shall conduct any further testing and analysis as is necessary to ascertain whether the Operator is in compliance with this Agreement.

7.06 STORAGE TANKS.

Neither above ground nor underground storage tanks will be permitted on the Land (this includes special enclosure equipment).

7.07 WASTE OR IMPAIRMENT OF VALUE.

Operator agrees nothing shall be done or kept on the Land which might impair the value of the City's property, or which would constitute waste or a public or private nuisance. The parties acknowledge that the Land is being used to host an electricity grid-connected photovoltaic solar power plant.

7.08 STRUCTURAL OR ELECTRICAL OVERLOADING.

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

7.09 NOISE, ODORS, VIBRATIONS, AND OTHER ANNOYANCES.

Operator shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Land 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.

7.10 ACCESSIBILITY.

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

7.11 NO OTHER ENCUMBRANCES.

Operator covenants and agrees not to encumber the Land or the City property without the prior written consent of the CEO, and to keep the Land free from all liens and encumbrances.

PART VIII- UTILITIES, DRAINAGE, MAINTENANCE AND SERVICES

8.01 LOCATION OF UTILITIES

Operator shall be solely responsible for locating all overhead, above ground, and underground utilities, including without limitation, electrical, sewer, water, and other utilities, and other structures or pipelines, before performing activities on the Land. DEN shall make information available to Operator regarding any subsurface structures, pipelines, or cables of which it has knowledge, but DEN is not under a duty to inspect for the presence of utilities, structures, pipelines, or cables. Operator shall take all necessary precautions to avoid damage to, or injury from, such infrastructure, and agrees to be solely responsible for any such damage to, or injury from, any such infrastructure the Land which result from the activities conducted by Operator or its designees.

8.02 UTILITIES.

Operator, at its sole cost and expense, shall make, obtain, and establish all electrical interconnections with the utility system(s) in accordance with Xcel Energy procedures and requirements, to measure and transmit the generated power, and all other utility connections, hook-ups, or taps as necessary for the operation of the System and Facilities on the Land. Operator shall secure all necessary applications and permits for such connections and shall pay all application and permit fees, hook-up, or tap fees. Operator further agrees at its sole cost and expense to provide meters adequate and required to measure the amount of generated power and utilities used or consumed by the City and to maintain said equipment in such a manner as to supply accurate measurements of such transmission to, and usage and consumption by, the City.

8.03 DRAINAGE.

Operator shall either be responsible for detaining on the Land the developed flow from its improvements and discharging such flow at its historic rate or constructing offsite detention ponds at a location acceptable to the CEO, and Operator shall maintain such drainage facilities. Operator

agrees to ensure that an agreement for drainage crossing or slope created by Operator's construction and any discharge point from the Land shall be constructed with capacity to pass storm from the one-hundred (100) year developed flow with adequate freeboard in accordance with the requirements of Urban Drainage and Flood Control District and the City. Operator shall keep such drainageways clear of debris and obstructions and maintain them in good condition for the passage of the required flow and avoid erosion degradation.

8.04 MAINTENANCE.

A. The cost of maintenance, care, and any necessary replacement of the Site Improvements shall be borne by Operator. Operator agrees, at its expense and without cost or expense to the City, during the Term hereof that:

1. Operator shall keep the System and Facilities and Site Improvements in good order and condition and will make all necessary and appropriate repairs and replacements thereof promptly and in a good and workmanlike fashion without diminishing the original quality of such improvements;
2. Operator shall not permit rubbish, debris, waste materials, or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Land or to be disposed of improperly.
3. Operator shall provide and maintain obstruction lights and all similar equipment or devices now, or at any time, required by any applicable law, ordinance, or municipal, state, or federal regulation.
4. Operator shall be responsible for the removal of snow and ice on the Land and on access road improvements solely to the extent Operator needs to use the access road improvement in order to access the Land.
5. Operator shall be responsible for the maintenance, replacement and upkeep of the grass, shrubs, trees, and all landscaped areas on the Lease Premises and License Area.

B. The Airport shall have the right to make reasonable objections regarding the maintenance and appearance of the Lease Premises and License Area. Operator agrees to promptly discontinue or remedy any reasonably objectionable condition within five (5) days after written notice by the Airport.

8.05 COMMON USE SERVICES.

The CEO may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling, and security guards. The CEO reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer, and deliveries will be common use services which Operator may be required to use and pay its entire actual share; however, other common use services may be utilized

at Operator's option. Operator agrees to pay the charges for those common use services which are utilized by Operator.

8.06 INTERRUPTION OF SERVICES.

Operator agrees that the City shall not be liable for failure to supply any utility services. The City reserves the right to temporarily discontinue utility 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 shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of rent or operate to release the Operator from any of its obligations hereunder, except as otherwise provided in Section 11.

PART IX- INSURANCE; INDENIFICATION; LIABILITY; TAXES

9.01 INSURANCE.

A. Operator shall, prior to performing work on Airport property, obtain and keep in force insurance policies as described in the City's form of insurance certificate, attached to this agreement as **Exhibit G** and incorporated herein. The certificate specifies the minimum insurance requirements Operator and any of its contractors must satisfy in order to perform work allowed under this agreement on Airport property.

B. The insurance coverage forms specified in this agreement are the minimum requirements. These requirements do not lessen or limit the liability of Operator. Operator 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 agreement.

C. The parties hereto understand and agree that the City and County of Denver, its officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this agreement, 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 similar protections otherwise legally available to the City and County of Denver, its officers, officials, and employees.

9.02 NO PERSONAL LIABILITY.

No employee of the City shall be held personally liable under this Agreement or because of its execution or attempted execution.

9.03 TAXES, LICENSES, LIENS, AND FEES.

A. Operator shall timely pay all personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees, or charges of any kind

which are assessed, levied, charged, confirmed, or imposed by any public authority due to Operator occupancy and use of the Land (or any portion or component thereof).

B. Operator agrees not to permit any mechanic's or materialman's, or any other lien, to become attached or be foreclosed upon the Land, the Land or improvements thereto, or any part thereof, by reason of any construction work or labor performed, or materials furnished by, any mechanic or materialman.

C. Operator agrees to furnish to the CEO, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes.

D. Operator further agrees to promptly pay when due all bills, debts, and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, encumbrance, judgment, or execution to be filed against the Land or improvements thereon which will in any way impair the rights of the City under this Agreement.

9.04 DEFENSE AND INDEMNIFICATION.

A. To the fullest extent permitted by law, the Operator agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents, and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Operator or the Operator's 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 for any acts or omissions of Operator or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Operator's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Operator's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Operator will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. 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 Agreement shall in no way lessen or limit the liability of the Operator under the terms of this indemnification obligation. The Operator shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

9.05 COMPLIANCE WITH ALL LAWS AND REGULATIONS.

Operator agrees to comply with all existing and future applicable federal, state, and local laws, regulations, and guidelines, including without limitation DEN Design Standards, all general rules and regulations adopted by the City or the CEO for the construction, management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the FAA or other authorized federal agency, including as these may be amended. Operator and its contractors shall comply with all Airport and construction site access requirements and shall obtain and pay for all required DEN site access permits and badges. Failure to comply will be grounds for the City to suspend or deny access.

PART X- DEFAULT AND REMEDIES

10.01 OPERATOR DEFAULT.

A. Operator shall be in default under this Agreement if, after the expiration of any applicable notice and cure period, Operator:

1. Fails to timely pay, within fifteen (15) days after such amount is due to the City, the compensation, rent, or any other payment required hereunder, and Operator has not made such payment within fifteen (15) days from receipt of written notice from the City; or
2. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
3. Transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease, or otherwise, to any other person, entity, or corporation with the exception of permitted assignments under Section 12.05; or
4. Abandons, deserts, or vacates the System or Facilities; or

5. Suffers any lien or attachment (other than a memorandum of lease, and precautionary UCC financing statements) to be filed against the Land, the Airport, or the City's property because of any act or omission of Operator, and such lien or attachment is not discharged or contested by Operator in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Operator; or
6. Fails to keep, perform, and observe any other promise, covenant, or agreement set forth in this Agreement, and such failure continues for a period of more than thirty (30) days after delivery by CEO of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Operator, within ten (10) days of notice, commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
7. Gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Operator for its use under this Agreement; or
8. Defaults on the Power Purchase Agreement, subject to the provisions in Section 17.A (x) and (xi) of the Power Purchase Agreement.

10.02 REMEDIES FOR THE CITY.

A. If Operator defaults in any of the covenants, terms, and conditions herein, the City may exercise any one or more of the following remedies after expiration of any applicable notice and cure period:

1. The City may elect to allow this Agreement to continue in full force and effect and to enforce all of the City's rights and remedies hereunder, including, without limitation, the right to collect rent as it becomes due together with Past Due Interest; or
2. The City may cancel and terminate this Agreement and repossess the Land, with process of law, and without liability for so doing, upon giving thirty (30) days written notice to Operator and Operator's Lender of its intention to terminate, at the end of which time all the rights hereunder of the Operator shall terminate, unless the default, which shall have been stated in such notice, shall have been cured per Section 10.01 above within such thirty (30) days. Notwithstanding the foregoing, Operator shall be allowed only two (2) notices of default per year, and no more than ten (10) notices of default during the Term, which it may cure within the thirty (30) day time specified in this section. The third annual or the eleventh overall notice shall be cured by Operator within fifteen (15) days. If Operator fails to cure within such time

frame, then the City at its sole option may (1) cancel and terminate all of the rights hereunder of the Operator, and the City may, upon the date specified in such notice, reenter the Land and remove there from all property of the Operator and store the same at the expense of the Operator, or (2) elect to proceed under subparagraph 3 below. If the City elects to terminate, Operator shall be liable to the City for all amounts owing at the time of termination, including but not limited to rent due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate the City for all loss of rent, damages, and costs, including attorney's fees, caused by Operator's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

3. The City may elect to reenter and take possession of the Land and expel Operator or any person claiming under Operator subject to the time period set forth below, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Agreement unless a written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry. Following reentry, the City may relet the Land, or any portion thereof, for the account of Operator, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The City shall not be responsible for any failure to relet or any failure to collect rent due for such reletting; however, the City agrees to make such efforts to relet as are consistent with state law in Colorado.

B. Operator shall be liable to the City for all costs of reletting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by the City, Operator shall continue to be liable for all amounts due as rent under this Agreement, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Agreement by the City, the City, having credited to the account of Operator any amounts recovered through reletting, shall refund, without interest, any amount which exceeds the rent, damages, and costs payable by Operator under this Agreement.

C. In any event of default, City may at its sole discretion either purchase the System and Facilities, in accordance with Section 4.05, or require Operator to remove the System and Facilities at Operator's cost.

10.03 REMEDIES CUMULATIVE.

The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available under law or equity.

10.04 ADMINISTRATIVE HEARING.

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

10.05 WAIVERS.

The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

10.06 CITY DEFAULT.

City shall be in default under this Agreement if City breaches any material term and fails to cure such breach within sixty (60) days from receipt of written notice, becomes insolvent, or files bankruptcy protection request that is not dismissed within sixty (60) days. In such event, the Operator may terminate this Agreement and the City will pay the termination value as set forth in **Exhibit D.**

PART XI- DAMAGE, DESTRUCTION, OR LOSS

11.01 DAMAGE TO, OR DESTRUCTION OF, LEASE PREMISES.

If the System and Facilities and any Site Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or such other cataclysmic event, the Operator shall promptly remove all debris resulting from such damage to the System and Facilities and any Site Improvements and at its sole discretion, may repair and/or reconstruct the System and Facilities and any Site Improvements with due diligence, at its sole cost and expense, in accordance with the plans and specifications for the Land as they existed prior to such damage or in accordance with the current needs of the Operator as approved by the CEO.

11.02 LOSS OR DAMAGE TO PROPERTY.

Neither party shall be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from electric lighting, water, rain, or snow which may come into or issue or flow from any part of the Airport property, or from the pipes thereof, or that may be caused by a party's employees or any other cause, and each party agrees to make no claim for any such loss or damage at any time.

11.03 RELEASE OF CITY.

The Parties hereto agree that neither party shall be liable to the other party for any injury to, or death of, any of either party's agents, representatives, or employees, or of any other person, or for any damage to any of such party's property or loss of revenue caused by any third person in

the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death, or damage is due to negligence or otherwise.

11.04 MUTUAL WAIVER/INSURANCE COVERAGE.

The City and Operator each waive any and every claim for recovery from the other for any and all loss of, or damage to, the Land, or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Operator agrees to give to each insurance company which has issued, or may issue, to the Operator policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

PART XII- MISCELLANEOUS PROVISIONS

12.01 ADVERTISING AND PUBLIC DISPLAYS.

Operator shall not install, or have installed, or allow to be installed, upon or within the Land, without the prior written approval of the Airport, any sign on the Land which is visible to the exterior of the buildings or on the Land, either lighted or unlighted, static or animated, poster, banners, or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display specified in the DEN Design Standards. Permission will not be granted for any advertising which fails to comply with DEN Design Standards or DEN Development Guidelines, or any advertising material, fixture or equipment which extends beyond the Land.

12.02 AGREEMENT BINDING UPON SUCCESSORS.

This Agreement, subject to the provisions of the section entitled "Assignment," shall be binding upon, and extend to the heirs, personal representatives, successors, and assigns of, the respective parties hereto.

12.03 AGREEMENT MADE IN COLORADO.

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

12.04 AGREEMENT SUBORDINATE TO AGREEMENTS WITH UNITED STATES.

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

12.05 ASSIGNMENT.

A. Neither party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Operator may assign any of its rights, duties, or obligations under this Agreement (i) to one or more of its affiliates, (ii) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction, (iii) to any person or entity succeeding to all of the assets and liabilities of the Operator or (iv) to a successor entity in a merger or acquisition transaction.

B. With respect to an assignment pursuant to clause (ii) in the immediately preceding sentence, the City acknowledges and agrees that, upon receipt of written direction by a financing-transaction assignee of the Operator (“**Lender**”), and notwithstanding any instructions to the contrary from the Operator, the City will recognize Lender, or any qualified third party operator or owner to whom Lender has reassigned the rights of the Operator under this lease, as the proper and lawful lessee of the Land and as the proper and lawful successor to the Operator with respect to access to the Land across or through the Land and fully entitled to receive the rights and benefits of the Operator hereunder so long as Lender or its assignee performs the obligations of the Operator hereunder. The City shall be protected, and shall incur no liability, in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender, which the City shall in good faith believe (a) to be genuine and (b) a copy of which shall have been delivered to the Operator. The City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

12.06 BOND ORDINANCES.

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

12.07 FORCE MAJEURE.

The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God,

judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

12.08 INCONVENIENCES DURING CONSTRUCTION.

Operator recognizes that from time to time during the Term, it may be necessary for the City to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance, and repair may inconvenience the Operator in its operation at the Airport. Operator agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors, and representatives by way of such inconveniences, and Operator waives any right to claim damages or other consideration therefrom.

12.09 INDEPENDENT CONTRACTOR.

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

12.10 NOTICES.

A. All notices required to be given to the City or Operator hereunder shall be in writing and sent by certified mail, return receipt requested, or a nationally recognized overnight courier, to:

City	Chief Executive Officer Denver International Airport 8500 Peña Boulevard, 9 th Floor Denver, Colorado 80249-2065
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Operator:	Oak Leaf Solar 60 LLC 2645 E. 2nd Avenue, Ste 206 Denver, Colorado 80206 John Hereford 303-333-1339 john@oakleafep.com
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B. Either party hereto may designate in writing, from time to time, the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be upon receipt and may be delivered by overnight courier with signature confirmation which is given to Operator or CEO.

12.11 PARAGRAPH HEADINGS.

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

12.12 PATENTS AND TRADEMARKS.

Operator represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement.

12.13 SECURITY.

Operator shall cause its officers, contractors, agents, and employees to comply with any and all existing and future security regulations adopted by the City pursuant to regulations of the TSA and FAA, as they may be amended from time to time.

12.14 SEVERABILITY.

If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

12.15 THIRD PARTIES.

This Agreement shall not be deemed to confer upon any third party or parties (except parties to whom the Operator may assign this Agreement 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 the Operator because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

12.16 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.

Operator shall cooperate and comply with the provisions of Denver Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Operator from City facilities or participating in City operations.

12.17 CITY SMOKING POLICY.

Operator and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

12.18 NO DISCRIMINATION IN EMPLOYMENT.

In connection with the performance of work under the Agreement, the Operator 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. The Operator shall insert the foregoing provision in all subcontracts.

12.19 COLORADO OPEN RECORDS ACT.

A. Operator acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 et seq., and Operator 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 Operator asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Operator to the City shall be considered confidential by the City only to the extent provided in CORA, and Operator agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

B. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Operator of such request in order to give Operator the opportunity to object to the disclosure of any material Operator may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Operator objects to disclosure, the 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, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Operator agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Operator does not wish disclosed. Operator agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Operator’s objection to disclosure, including prompt reimbursement to the City of all reasonable attorney’s fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

12.20 AMERICANS WITH DISABILITIES ACT.

Operator shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (“**ADA**”), 42 U.S.C. § 12101, *et. seq.*, and other federal, state, and local accessibility requirements. Operator shall not discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this provision on the part of Operator, its employees, agents, or assigns may constitute a material breach of this Agreement. If requested by City, Operator shall engage a qualified disability consultant to review Operator’s work for compliance with the ADA (and any subsequent amendments to the statute) and all other related federal, state, and local disability requirements, and Operator shall remedy any noncompliance found by the qualified disability consultant as soon as practicable.

12.21 ENTIRE AGREEMENT.

The parties agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No amendments, unless expressly reserved to the CEO herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

12.22 FINAL APPROVAL.

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

12.23 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

A. **Attachments.** This Agreement consists of Parts I through XII which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix:	Standard Federal Assurances
Exhibit A:	Depiction of the Land
Exhibit B-1:	Legal Description of Lease Premises
Exhibit B-2:	Depiction of Lease Premises, with Site Improvements (Sec. 1.18)
Exhibit C:	License Area
Exhibit D:	Termination Value
Exhibit E:	Plans and Specifications for System, Facilities, Site Improvements (Sections 6.01 and 6.02)
Exhibit F:	Environmental Requirements
Exhibit G:	Insurance

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

Appendix
Parts I through XII hereof
Exhibit G
Exhibit F
Exhibit E
Exhibit A
Exhibits B-1 and B-2
Exhibit C
Exhibit D

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

Contract Control Number: PLANE-202580625-00
Contractor Name: Oak Leaf Solar 60 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-202580625-00
Oak Leaf Solar 60 LLC

DocuSigned by:
John Hereford
911B74303E2040B...

By: _____

John Hereford

Name: _____
(please print)

Mr John Hereford

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPENDIX – STANDARD FEDERAL ASSURANCES

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, **regardless of whether or not the contracts are federally funded**. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, “Sponsor” means The City and County of Denver, Department of Aviation, and “Contractor” or “Consultant” means the Party of the Second Part as set forth in Contract / Lease / Agreement to which this Appendix is attached.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Issued on June 19, 2018

GENERAL CIVIL RIGHTS PROVISIONS

Clause that is used for Contracts:

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 subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.1, Issued on June 19, 2018

Clause that is used for Lease Agreements or Transfer Agreements:

The (tenant/concessionaire/lessee) 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. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.2, Issued on June 19, 2018

CIVIL RIGHTS – TITLE VI ASSURANCE

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. **Non-discrimination:** 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.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.1, Issued on June 19, 2018

Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program:

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the 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, 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 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 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.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.3, Issued on June 19, 2018

Title VI 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 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, 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, Sponsor will there upon revert to and vest in and become the absolute property 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.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.4, Issued on June 19, 2018

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 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.5, Issued on June 19, 2018

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A17.3, Issued on June 19, 2018

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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). Contractor 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.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A20.3, Issued on June 19, 2018

For additional information, please refer to:
https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

Exhibit B-1: Legal Description of Lease Premises

Contract 202580625-00

(to be inserted after building permits obtained and per final (and DEN approved) site plan, permitting and construction as built drawings)

Exhibit B-2 Depiction of Lease Premises 202580625-00

Approximately 90 acres

(to be inserted after building permits obtained and per final DEN approved site plan,
permitting and construction as built drawings)

Exhibit C: Depiction of License Area, Contract 202580625-00

(Legal Description to be inserted after building permits obtained and per final (and DEN approved) site plan, permitting and construction as-built drawings)



Exhibit D: Termination Value, Contract 202580625-00

DEN Solar 10 Termination Value Schedule		
Year	Purchase Option	Termination Value
1		\$38,667,692
2		\$35,362,008
3		\$32,402,814
4		\$29,402,538
5		\$26,222,623
6	Fair Market Value	\$22,865,618
7		\$22,065,594
8		\$21,120,297
9		\$20,031,238
10	Fair Market Value	\$18,783,514
11		\$17,360,834
12		\$15,745,409
13		\$13,917,809
14		\$11,856,816
15	Fair Market Value	\$9,539,264
16		\$8,120,058
17		\$7,060,920
18		\$6,001,782
19		\$4,942,644
20	Fair Market Value	Fair Market Value
21		Fair Market Value
22		Fair Market Value
23		Fair Market Value
24		Fair Market Value
25	Fair Market Value	Fair Market Value

* Fair Market Value under Section 4.05 shall be determined at the time the option is exercisable and based upon the formula which the City and Tenant believe to approximate the System's fair market value at the time the Purchase Option may be exercised.

Exhibit E: Design Standards, Construction Procedures, and DEN Performance Specifications

Contract 202580625-00

Section 1. Design Standards. The Tenant agrees to use and comply with the Denver International Airport Design Standards Manuals for design of any improvements to the facility. The Tenant further agrees to design and construct such improvements in accordance with the Denver International Airport Tenant Development Guidelines (TDGs), as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

All design drawings submitted by the Tenant to the City shall be provided in the latest release of AutoCAD format in accordance with the City's Design Standards Manual.

Approval of the City's Designated Representative (City) shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof.

Section 2. Construction Procedures.

A. Compliance with standards: All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the improvements are constructed and installed in compliance with the Plans and Specifications.

B. Submissions required: To assist the City in monitoring and inspecting such construction, the Tenant's contractor(s) or subcontractor(s) shall submit, or cause to be submitted to the City, for information and record purposes, copies of all the following:

- (i) field test reports;
- (ii) material certificates;
- (iii) approved shop drawings to be reviewed for compliance with the Airport design and construction standards;
- (iv) requests for payment to contractors or subcontractors;
- (v) progress reports;
- (vi) notification of substantial completion of the leased facilities and all site improvements and final acceptance thereof;
- (vii) two copies of maintenance and operation manuals in connection with building systems and all updates thereof;
- (viii) as-constructed drawings; and

- (ix) any other documents related to the construction of the improvements which may be reasonably requested by the City.

C. SOW Changes: No change order which materially changes the scope of the work shall be affected by the Tenant without the approval of the City, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

D. City Inspection: All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City.

E. Advance Notice of Modification: The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

F. Compliance with Plans: The Tenant shall cause all construction work, workmanship, materials, and installations to be in full compliance with plans and specifications. The City shall have the right to halt construction of the improvements at any time if such construction is at material variance from the Plans and Specifications until such variance is corrected, or if such construction poses an Immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

G. Utilities: The Tenant shall perform utility location identification prior to any excavation activities. In addition, Tenant shall obtain such utility connections or hook-ups as shall be necessary and shall have the right to receive all necessary utilities and services, and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up and all other user charges of whatever nature occasioned thereby, except tap and developer fees. The Tenant further agrees to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurement of such usage and consumption.

H. Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the Term shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever

nature, as set forth herein.

I. Documents on Completion: Upon completion of such work, the Tenant shall deliver to the City revised as-constructed drawings, evidence of payment, contractor's affidavits, and full and final waivers of any liens for labor, services, or materials. The Tenant shall include in its agreement with its contractors provisions whereby such contractors shall defend and hold the City harmless from all costs, damages, liens, and expenses related to such work.

J. As-Builts: Within sixty (60) days after completion of construction of the improvements, the Tenant shall furnish to the City two sets of as-constructed drawings, in the latest release of AutoCAD, showing in detail all construction, including the locations of all underground and above ground utility lines.

K. Standard of Performance: All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

Exhibit F: DEN Environmental Requirements, Contract 202580625-00

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT G

CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION GROUND LEASE AGREEMENT

A. Certificate Holder and Submission Instructions

Commercial Operator must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249

- ACORD Form (or equivalent) certificate is required.
- Commercial Operator 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 official repository for Certificates of Insurance (COIs) within DEN is PINS Advantage. Upon contract initiation, an email will be sent to the Commercial Operator with instructions to upload the COIs for insurance compliance. 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 Commercial Operator.

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. “Commercial Operator” 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

Commercial Operator shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.

2. Business Automobile Liability

Commercial Operator 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. DEN has established an Airside Unescorted Excess Auto Liability Program to support Commercial Operators in meeting the \$10,000,000 auto liability requirement for unescorted airside driving privileges. This program offers \$9,000,000 in excess coverage over a \$1,000,000 base liability. For more information, please visit: [DEN AirsideDrive Program](#).

- b. If Commercial Operator 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, Commercial Operator shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
 - d. If Commercial Operator does not own any fleet vehicles and/or Commercial Operator's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Commercial Operator 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 Commercial Operator. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Commercial Operator will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
- 3. **Workers' Compensation and Employer's Liability Insurance**
 Commercial Operator shall maintain the coverage as required by statute for each work location and shall maintain 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 Commercial Operator 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**
 Commercial Operator shall maintain minimum limits of \$1,000,000 per occurrence and \$1,000,000 annual policy aggregate. Policy to include coverage for bodily injury, property damage, emergency response, clean-up costs, and defense costs including costs and expenses incurred during an investigation.
- 5. **Builder's Risk Insurance:**
 During the duration of the construction or tenant buildout activity, Commercial Operator shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:
 - a. apply from the time any covered property becomes the responsibility of the Commercial Operator, 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 City and if applicable, affiliated, or associate entities, the General Commercial Operator, 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, specifically permitting occupancy of the building during construction. Commercial Operator shall take reasonable steps to obtain consent of the insurer 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).

6. **Property Insurance**

Commercial Operator is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Commercial Operator carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

7. **Unmanned Aerial Vehicle (UAV) Liability:**

If Commercial Operator 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. Commercial Operator must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

8. **Excess/Umbrella Liability**

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project 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), Commercial Operator'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), Commercial Operator'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 Commercial Operator 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 is waived specific to Workers' Compensation coverage.

If Commercial Operator and its employees performing services under this Agreement are domiciled in a monopolistic state this requirement shall not apply to Workers' Compensation policy(ies) issued by a state fund. However, Commercial Operator understands any subrogation against the City from its state-funded Workers' Compensation insurer arising from a claim related to this Agreement shall become the responsibility of the Commercial Operator under Section 14.01 Defense and Indemnification of this Agreement subject to the terms, conditions and limitations therein.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. 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, Commercial Operator 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. Commercial Operator 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, Commercial Operator will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Commercial Operator cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Commercial Operator 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. Commercial Operator'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 Commercial Operator.
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 Commercial Operator 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 agreements) 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 Commercial Operator 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 Commercial Operator'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. Commercial Operator 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 verification of required coverage.
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. Commercial Operator shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Commercial Operator'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 differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Commercial Operator and its subcontractors of any tier. Part 230 and the DEN Airport Rules and Regulations may be found: [DEN Airport Rules and Regulations](#).