

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB13-0199

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Ground Lease Agreement between the City and County of Denver and DENVER SOLAR IV LLC, for a photovoltaic power system at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Ground Lease Agreement, contract control number 201310161, in the words and figures contained and set forth in that form of Ground Lease Agreement in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0289 is hereby approved.

COMMITTEE APPROVAL DATE: March 28, 2013.

MAYOR-COUNCIL DATE: April 2, 2013.

PASSED BY THE COUNCIL _____ 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2013; _____ 2013

PREPARED BY: Debra Overn:  DATE: April 4, 2013

Pursuant to Section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: April 4, 2013

GROUND LEASE AGREEMENT

between

CITY AND COUNTY OF DENVER

and

Denver Solar IV, LLC

CONSTRUCTION SUMMARY PAGE

This Summary Page, consisting of one page, is attached to and made a part of that certain Ground Lease Agreement between the City and County of Denver and the Tenant listed below.

TENANT

Name Denver Solar IV LLC

Address 2645 East 2nd Avenue Suite 206
Denver, CO 80206

Attention President

CONSTRUCTION AND INSTALLATION DATE

November 30, 2013

CONSTRUCTION PERIOD PERFORMANCE AND PAYMENT BOND AMOUNT

(100% of the cost of removal of the System during the construction period, in no event more than \$1,000,000)

CONSTRUCTION INSURANCE POLICY AMOUNTS

A. Builders Risk	<u>100% of construction contract price</u>
B. Minimum Commercial General Liability	
Combined Single Limit	<u>\$1,000,000</u>
General Aggregate	<u>\$2,000,000</u>
C. Business Auto Liability	
Combined Single Limit	<u>\$1,000,000</u>
D. Worker's Compensation	<u>Statutory Requirements</u>

Tenant

COMPENSATION (Initial)

Ground Rent	<u>\$340.21 per acre per year</u>
Energy Production at Agreed Price	as provided in Solar Power Purchase Agreement between the Parties

INSURANCE POLICY AMOUNTS

A. Comprehensive General Liability or its equivalent	\$1,000,000.00/\$2,000,000.00
B. Automobile/Delivery Vehicle Liability	\$1,000,000

DESCRIPTION OF EXHIBITS AND ADDENDA

- Exhibit A** Lease Premises Legal Description
- Exhibit B** Site Plan of Lease Premises and Site Improvements
- Exhibit C** Purchase Option Summary Sheet
- Exhibit D** Insurance Certificate
- Exhibit E** Design Standards, Construction Procedures, and DIA Performance Specifications
- Exhibit F** DIA Environmental Requirements

Tenant

**GROUND LEASE AGREEMENT
SUMMARY PAGE**

This Summary Page, consisting of two pages, is attached to and made a part of that certain Ground Lease Agreement between the City and County of Denver and the Tenant listed below.

TENANT

Name Denver Solar IV LLC

Address 2645 East 2nd Avenue Suite 206
Denver, CO 80206

Attention President

LEASE PREMISES

Location Denver International Airport ("DIA")

Address 8500 Peña Boulevard
Denver, Colorado 80249-6340

Acres Up to ~12 acres, subject to final design

PERMITTED USES installation and operation of a photovoltaic power system and related equipment

HOURS OF OPERATION 365 days a year, weather permitting

TERM

Effective Date April 15, 2013
Expiration Date November 14, 2033

Tenant

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Lease"), 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 ("**City**"), and **DENVER SOLAR IV, LLC**, a Delaware limited liability company authorized to do business in the State of Colorado ("**Tenant**").

WHEREAS, the City owns and operates Denver International Airport ("**DIA**" or "**Airport**"), and Tenant desires to obtain certain rights, services, and privileges in connection with the use of certain 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 Tenant, operated upon the Airport by the Tenant; and

WHEREAS, the Tenant and City will enter into a twenty year Power Purchase Agreement outlining the terms of the purchase and sale of electricity produced by the System;

WHEREAS, the City will be providing a subordinated loan to the solar project's parent entity as outlined in the Loan Agreement and whereas this loan ("**DIA Loan**") will be guaranteed by the Denver Solar IV LLC parent entity as outlined in the Loan Agreement; and

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

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

SECTION 1 GENERAL

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

1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS, AND ADDENDA. The Summary Pages attached to the Lease and the Exhibits and Addenda as described on the Summary Pages and attached to this Lease are incorporated into this Lease by reference.

1.03 CONDITIONS PRECEDENT TO EFFECTIVENESS OF LEASE. The Parties agree that acknowledgement of no objection from the Federal Aviation Administration ("FAA") of the plans for the System, and any other required FAA or other regulatory approvals, shall be a condition precedent to the effectiveness of this Lease.

SECTION 2 DEFINITIONS

2.01 AUDITOR. "Auditor" shall mean the City's Auditor and his authorized representatives.

2.02 BUILDING CODE. "Building Code" shall mean the current Building Code for the City and County of Denver based on the International Code Council codes

2.03 COMMENCEMENT DATE. "Commencement Date" shall mean the date of completion established and memorialized by a written notice issued by Tenant and addressed to the Manager, and acceptance of the System, which is expected to be no later than November 30, 2013, and shall be established and memorialized by a written notice issued by the Manager and addressed to Tenant.

2.04 DIA DESIGN STANDARDS. "DIA Design Standards" shall mean the design standards and criteria for Denver International Airport, and as they may be amended from time to time.

2.05 DIA DEVELOPMENT GUIDELINES. "DIA Development Guidelines" shall mean the tenant development guidelines and criteria established for Airport tenants and concessionaires for design, construction, installation, signage, and related matters, and as they may be amended from time to time.

2.06 DIA ENVIRONMENTAL GUIDELINES. "DIA 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.

2.07 EPC Provider. "EPC Provider" shall mean the contractor selected by the Tenant to design and construct the Generating Facility.

2.08 LAND. "Land" shall mean the parcel of real property legally described on **Exhibit A** and generally depicted on **Exhibit B** attached hereto and containing the number of acres, more or less, as set forth therein. The City expressly reserves from the Land all oil, gas, and other mineral rights, air rights, and water rights, and other rights as may be stated in this Lease.

2.09 LEASE PREMISES. "Lease Premises" shall mean the Land upon which the System is installed.

2.10 MANAGER OR MANAGER OF AVIATION. "Manager" or "Manager of Aviation" shall mean the Manager of the City's Department of Aviation.

2.11 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.

2.12 POWER PURCHASE AGREEMENT. "Power Purchase Agreement" shall mean that certain Power Purchase Agreement of even date herewith, between Tenant as Power Provider, and the City as Purchaser.

2.13 SITE IMPROVEMENTS. "Site Improvements" shall mean all initial construction and any improvements on the Lease Premises, as well as any other improvements outside of the Lease Premises but on Airport property, including access roadway improvements, drainage improvements, utility and System interconnects, as described in Exhibit B attached hereto, and any future improvements approved by the Manager and constructed by Tenant pursuant to terms of this Lease.

2.14 SYSTEM. "System" shall mean the solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, and utility interconnections installed by Tenant on the Lease Premises and part of the photovoltaic power generating system owned and operated by Tenant.

2.15 TENANT'S EQUIPMENT. "Tenant's Equipment" shall mean personal property and equipment, and signs used in the operation of the business of Tenant on the Lease Premises but not specifically part of the System.

SECTION 3 LEASE OF PREMISES

3.01 LEASE RIGHTS GRANTED. The City grants to Tenant 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 Lease. The rights and privileges granted herein 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 Lease Premises. Should any easements or rights of way to the Land that would prevent Tenant's performance hereunder or under the Power Purchase Agreement materialize at some future date, the City agrees to resolve and work around such matters at its sole cost and expense.

3.02 USE OF LEASE PREMISES. Tenant shall have the right to construct upon and use the Lease Premises solely for the installation and operation of the System and related services as set forth on the Summary Pages. The Land and Lease Premises shall be utilized for no other purposes, unless otherwise authorized in writing by the Manager of Aviation. It is understood that the use of Lease Premises is restricted by (1) the zoning code designation of Aviation property by the City, (2) the Intergovernmental Agreement ("IGA") dated April 21, 1988, between the City and Adams County, and (3) by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipal agency having jurisdiction over the Lease Premises. The Land's current zoning code designation specifically allows energy production.

3.03 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 Tenant's rights hereunder or Tenant's ability to perform as Power Provider under the Power Purchase Agreement. Tenant 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 for the City and County of Denver are not exclusive.

3.04 CITY RESERVATION; NO INTERFERENCE. The City reserves for itself the right to install utilities upon areas of the Lease Premises as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant 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 Tenant's operations and use of the Lease Premises. The Tenant 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 Tenant's operations or use of the Lease Premises. Notwithstanding the above, and notwithstanding the System's presence as a fixture on the Lease Premises, the City represents to Tenant 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, *except that* the Tenant is aware that the System will be serving and is in close proximity to the DIA Aircraft Fire Training Facility, and Tenant expressly declares that neither Tenant nor any related entity shall ever file a claim against the City based on the operation of the Aircraft Fire Training Facility.

3.05 MEANS OF ACCESS. Tenant, its agents and employees, have a non-exclusive right of ingress to and egress from the Lease Premises 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 Lease Premises, *excepting* in the case of severe snow storms, other extreme and materially adverse weather conditions, and any increased security alerts. Tenant hereby releases and discharges the City of and from any and all claims, demands, or causes of action which the Tenant 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 Tenant, and reasonable access, ingress, and egress is available after any such modification.

3.06 RIGHT OF INSPECTION. The City retains the full right of entry upon the Land and to the Lease Premises, with reasonable notice to Tenant, 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 Lease Premises does not unreasonably interfere with the Tenant's operations and use of the Lease Premises. The City shall not be obligated to notify Tenant in advance of any entry upon the Land and/or the Lease Premises 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 Tenant within a reasonable time after such emergency entry. No such entry by or on behalf of the City upon the Land and/or the Lease Premises shall constitute or cause a termination of the Lease nor shall such entry be deemed to constitute an interference with the possession thereof by the Tenant.

SECTION 4 TERM

4.01 TERM. The term of this Agreement shall begin on April 15, 2013 (the "Commencement Date"), and terminate November 14, 2033, or upon the termination of the Power Purchase Agreement ("PPA"), whichever is earlier ("Expiration Date"), unless terminated earlier pursuant to this Section 4 (the "Term").

4.02 TERMINATION OF LEASE BY CITY FOR AVIATION PURPOSES.

A. The City reserves the right to terminate this Lease for the purpose of implementing any master plan for development or expansion of the Airport or an Airport facility. In the event the Manager of Aviation determines that the City requires use of the property for aviation purposes during the Term, and such aviation purposes require termination of the lease, the City shall have the right to terminate this Lease upon six (6) months prior written notice to Tenant.

B. If such notice is provided under this paragraph, then the City may, at its option, not terminate the Lease but offer to Tenant comparable and suitable alternate land which shall to the extent possible be similar to the Lease Premises as to size and general location and access to sunlight, and provided Tenant is not in default hereunder, shall pay to Tenant a relocation reimbursement equal to the actual removal, reinstallation, interconnection expenditures, and all documented costs of deployment incurred by Tenant for such relocation, should Tenant, in its reasonable discretion, agree to such relocation. In such instance when the City requires relocation, the City shall pay to Tenant, 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 is not in Commercial Operation due to the relocation..

C. In such instance when the City requires termination of the Lease for airport purposes as defined in Section 4.02.A, the City shall be responsible for all associated costs of system removal and payment of the Termination Value in Exhibit C

4.03 HOLDING OVER. If Tenant holds over after termination of this Lease, thereafter Tenant's occupancy shall be at sufferance but otherwise Tenant 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 Tenant 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 Lease Premises, as well as any damages incurred by the City.

4.04 SURRENDER OF LEASE PREMISES. Upon the expiration or earlier termination of this Lease not falling under Section 4.02, on the date specified in any demand for possession by the City, Tenant covenants and agrees that, at the City's sole option, (i) the City may elect to purchase the System in accordance with Section 4.05, or (ii) if the City is not in default under the Power Purchase Agreement, then at Tenant's expense Tenant shall remove the System or such portion thereof as is specified by the Manager, within one hundred twenty (120) days of such expiration or termination or within such additional time as is granted by the Manager. If termination of this Lease is due to the default of City, and the City elects not to purchase the System, the City shall be responsible for removal costs for the System; otherwise removal shall be at Tenant's expense. If all or any portion of the System is removed as requested by the City, Tenant shall, at Tenant's expense, restore the Land or property 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 Tenant's expense.

4.05 OPTION FOR PURCHASE OF SYSTEM.

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 from the Tenant, including all rights, privileges, and contracts held by the Tenant. If the City elects to purchase the System prior to the Expiration Date, the City shall pay to the Tenant the then-"Fair Market Value" of the System (as defined in Section 4.05.B below). Not less than ninety (90) days prior to the projected date for exercise of the purchase option, the City shall provide written notice to Tenant of the City's desire to determine the Fair Market Value of the System. 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 Tenant, the parties will execute all documents necessary to cause title to the System to pass to the City as-is, provided, however, that Tenant shall remove any encumbrances placed on the System by the Tenant.

B. The "Fair Market Value" of the System shall be the value determined by mutual agreement of the City and Tenant within thirty (30) days of the City's notice and desire to determine the Fair Market Value pursuant to this Section 4.05. If the City and Tenant 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 will be transferred from Tenant 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 by the City, Tenant shall convey all its title, ownership rights, and any other interests Tenant holds in the System and the renewable energy credits and certificates and other revenues related to the System. 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 Tenant and Public Service Co. of Colorado d.b.a. Xcel Energy.

C. In order that the City may make an informed decision regarding whether to purchase the System, the Tenant shall annually provide all operating and maintenance records of the System. Throughout the Term, Tenant shall keep, or cause to be kept, and be made available to City, accurate and complete operation and maintenance records.

SECTION 5 COMPENSATION

5.01 COMPENSATION

A. Ground Rent. Tenant agrees to pay the City the Ground Rent set forth on the Summary Pages beginning on the Effective Date and thereafter during the Term on January 1 of each calendar year, in advance and without demand, as it may be modified from time to time, subject to the City's right to reestablish said Ground Rent under Section 5.05. The Ground Rent for any partial month during the Term shall be prorated on a per diem basis.

B. Purchase Price and Energy Output. Tenant agrees to provide to the City, and the City agrees to purchase, the Energy Output at the Purchase Price specified in the Power Purchase 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

All Ground Rent and other compensation payable to the City hereunder shall be made payable to "Airport Revenue Fund" without notice at the following:

Office of the Manager of Aviation
Denver International Airport
P.O. Box 492065
Denver, Colorado 80249-2065

or at such other place as the Manager of Aviation or his authorized representative may hereafter designate by notice in writing to Tenant.

All sums shall be payable in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Tenant agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

5.04 BOOKS OF ACCOUNT AND AUDITING.

A. In connection with any action performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Tenant's which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Tenant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

B. The City and the Auditor of the City or any of his duly authorized representatives, until the expiration of three years after the final payment under this Agreement, shall have access to and the right to examine any directly pertinent books, documents, papers and records of Tenant which are related to work performed under this Agreement without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

5.05 REESTABLISHMENT OF RENTALS, FEES AND CHARGES

A. The City, through its Manager of Aviation, may from time to time, at intervals of not more than five (5) years nor less than one (1) year from the previous change, at the Manager of Aviation'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 an effective date which is 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 Manager of Aviation proposes any change in the schedule of rentals, fees and charges, the City will give notice thereof to Tenant 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%) in the dollar amount of compensation paid by Tenant for the prior calendar year, then Tenant may decline to pay compensation at the new rate(s). Tenant 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 Manager of Aviation of its intention to cancel and terminate this Lease. Upon such notice of intent to cancel and terminate, Tenant shall remove its property from the Land and surrender the Demised Premises upon a date specified by the Manager of Aviation but in no event less than one hundred twenty (120) days after the Tenant's notice of intent to cancel. In no event shall the rate increase go into effect if Tenant has timely delivered its intent to cancel and terminate this Lease. Should Tenant 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 Manager of Aviation.

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

SECTION 6 CONSTRUCTION AND INSTALLATION OF SYSTEM

6.01 CONSTRUCTION OF SYSTEM. Tenant shall, at its sole cost, construct and install the System and Site Improvements in full compliance with approved plans and specifications and the requirements of Exhibit E as hereinafter provided.

6.02 CONSTRUCTION OF SITE IMPROVEMENTS. Tenant shall, at its sole cost, construct and install the Site Improvements in full compliance with approved plans and specifications as hereinafter provided.

6.03 APPROVAL OF PLANS AND SPECIFICATIONS. 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 Airport Engineering 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.

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, DIA Design Standards, DIA Development Guidelines and DIA 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 Tenant's operations; responsibility therefor shall at all times remain with Tenant.

6.04 CONSTRUCTION PERIOD. Tenant shall complete the construction and installation of the System and Site Improvements no later than the date set forth on the Summary Pages ("Construction Period"). The Construction Period shall be extended by the Manager if completion of the System or Site Improvements was delayed through no fault of Tenant. 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 output and proper performance of System interconnection.

6.05 COORDINATION OF CONSTRUCTION.

A. Tenant shall cooperate with the City and its planners, designers, architects, and engineers in the construction and installation of the System and Site Improvements on the Lease Premises and comply with the approved plans and specifications of the Building Code, and to the extent applicable the DIA Development Guidelines. Tenant recognizes that during its Construction Period construction may also occur in adjacent areas surrounding its Lease Premises, and Tenant 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. Tenant shall prevent activities associated with the construction or installation of the System 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. Tenant shall be responsible for all utilities needed during construction.

D. Tenant 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 DIA property.

E. All construction work, materials, and installations involved in or incidental to the construction on the Lease Premises 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 Lease Premises to monitor and inspect the construction of the Site Improvements to assure 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 Lease Premises 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.

6.06 ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION.

In the performance of construction activities for the Tenant Improvements or Site Improvements, Tenant 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:

A. Environmental Control. Tenant shall comply with the requirements under Denver International Airport Technical Specifications Section for Environmental Controls and Temporary Erosion and Sedimentation Control.

B. Air Pollution. If required by law, Tenant shall obtain a fugitive dust permit from the Colorado Department of Health and Environment.

C. Stormwater Permit. If required by law, Tenant shall obtain a construction stormwater permit from the Colorado Department of Health and Environment.

D. Soil Erosion and Sedimentation Control. Tenant shall submit a plan for the City 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. Tenant shall implement prudent industry practices in preventing soil erosion and controlling sedimentation.

E. Solid and Hazardous Waste Controls. Tenant 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. Tenant 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. Tenant 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.

F. Noise and Vibration Control. Tenant shall comply with all noise and vibration control requirements of Denver International Airport Technical Specification Section 01566, or any successor policy.

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

6.08 BUILDING PERMIT. Tenant 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.

6.09 CONSTRUCTION BONDS. Prior to the commencement of construction, Tenant shall deliver to the Manager a payment and performance bond in a sum not less than One Hundred Percent (100%) of the cost of removal of the System 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 provide in DIA Development Guidelines.

In lieu of such construction bond, the Tenant may provide only such alternate forms of security as are permitted in DIA Development Guidelines, in such form and with conditions as provided therein.

6.10 CONSTRUCTION INSURANCE. Tenant 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 and Site Improvements the following insurance:

A. **Builder's Risk Insurance.** A builder's risk insurance policy or its equivalent covering 100% of the construction contract amount.

B. **Commercial General Liability Insurance.** A commercial general liability insurance policy or its equivalent, written on an occurrence or claims-made basis and including coverage for premise/operations, products/completed operations, contractual, independent contractors, broad form property damage, personal injury, and fire legal liability. This commercial general liability insurance policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage in a combined single limit per occurrence and in aggregate, for liability associated with this Lease.

This policy shall further cover the obligations assumed by Tenant hereunder and shall include the City as an additional insured. This policy shall contain a waiver of subrogation in favor of the City. This insurance policy shall not contain any care, custody or control exclusions, and shall not contain any exclusion for bodily injury to or sickness, disease or death of any employee of Tenant or any of its contractors which would conflict with or any way impair coverage under the contractual liability endorsement.

C. **Business Auto Liability Insurance.** A business auto liability insurance policy which includes coverage for owned, non-owned and hired vehicles in an amount not less than One Million Dollars (\$1,000,000) for landside or tunnel access in a combined single limit for damage or bodily injury, including wrongful death, as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned or non-owned vehicles, including rented vehicles, and including their use on or off City property or by City personnel. This policy shall include the City as an additional insured.

D. **Worker's Compensation Insurance.** Worker's compensation insurance which shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide coverage including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) to protect Tenant from any and all claims arising from performance of work under this Lease.

The above amounts may be increased or modified by the Manager, or in accordance with the DIA Development Guidelines, at any time during construction.

E. **Property Insurance:** Tenant shall provide permanent property coverage after installation, in amounts specified below. The Property insurance shall be written on a Covered Cause of Loss-Special Form or its equivalent,

replacement cost coverage, including coverage for flood and earth movement.

The City and County of Denver shall be named as mortgagee/loss payee and a waiver of subrogation shall apply the City and County of Denver as Mortgagee/Loss Payee.

Property Coverage	100% of the replacement cost of the Property
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6.11 LIMITATION ON LIABILITY. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the System and any Site Improvements or other improvements to or upon the Airport made by Tenant. Tenant 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. The City agrees that no liability shall attach to Tenant as a result of any City-caused interference or delay. 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.

6.12 COMPLIANCE WITH ALL LAWS AND REGULATIONS. Tenant agrees not to use or permit the Lease Premises 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 not authorized hereunder, and it further agrees that it will use the Lease Premises in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager 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. Tenant further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Tenant or which the Manager may reasonably request relating to Tenant's operations.

A. Prevailing Wage. Tenant shall require its contractors and all of its subcontractors and subtenants to pay every worker, laborer or mechanic employed by them in the performance of the construction of improvements on the Lease Premises prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and Tenant shall require the contractor to submit with its bid the wage schedule applicable. The

contractor shall post in a prominent and easily accessible place at the site of the improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Auditor or his authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement concerning the records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 49-173, Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, herein above set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not recur. The issuance of a stop-work order shall not relieve the contractor's surety of any liability on the contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

B. Small Business Opportunity Division. The Director of the Division of Small Business Opportunity ("DSBO") will review the employment practices of Tenant's contractors and all levels of subcontractors and suppliers, and the utilization by the contractors of Minority and Women Business Enterprises (MBE and WBE) and/or Disadvantaged Business Enterprises (DBE), in connection with work performed on the Lease Premises. The reviews will be made to determine whether or not all applicable rules, regulations, ordinances, and laws governing equal employment opportunity, affirmative action programs, and MBE, WBE and DBE requirements are complied with.

This Lease is subject to all applicable provisions of Divisions 1 and 3 of Article III of Chapter 28 of the City's Revised Municipal Code and the MBE and WBE Program's Rules and Regulations. Tenant acknowledges its continuing duty, pursuant to Denver's MBE and WBE Ordinances, to maintain throughout the duration of the Construction Period compliance with the level of participation upon which the City approved the award of this Lease to the Tenant.

6.13 RESTRICTION ON CHANGES AND ALTERATIONS. Tenant agrees not to materially improve, change, alter, add to, remove or demolish all or any of the System or Site Improvements without the prior written consent of the Manager or his authorized representative. Tenant must comply with all conditions which may be reasonably imposed by the Manager. 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 Manager or his authorized representative within fourteen (14) calendar days of submission and before construction work commences. Four copies of plans for all changes or alterations shall be given to the Director, Airport Engineering for review and written approval prior to commencement of construction. After City's final approval, City shall return to Tenant one approved copy for its records and shall retain one approved copy as an official record thereof.

6.14 TITLE TO IMPROVEMENTS; TITLE TO SYSTEM. Tenant agrees that all improvements to the Lease Premises or 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 presence on the Lease Premises, Tenant shall retain title to and be the legal and beneficial owner of the System, and the System shall remain the personal property of Tenant or Tenant's assigns until such time as the City purchases the System. The City consents to Tenant recording a memorandum of this Lease in the land registry or title records of the county where the Lease Premises are located or other applicable government office. Tenant 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 in order to protect Tenant's rights in the System. The City expressly denies any ownership, interest, operation, responsibility, or liability for the installation, operation or maintenance of the System or the Tenant's Equipment at any time during the Term.

SECTION 7 OPERATION AND USE OF LEASE PREMISES

7.01 OPERATIONS. System production and operation requirements:

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

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

C. **Safety and Security:** The Airport requires personnel badging and vehicle permitting pursuant to federal regulations of the Transportation Security Administration

and Federal Aviation Administration. Tenant shall be required to obtain and pay for all required access authorizations, background checks, and badges and permits. If required, Tenant 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 Lease Premises. The parties agree that no secured (fenced) perimeter is required as of the Effective Date. Tenant reserves the right to establish and maintain a secured (fenced) perimeter in the future should Tenant determine such a perimeter necessary.

7.02 HOURS OF OPERATION. Except for scheduled maintenance outages and emergency situations, Tenant agrees to keep its System in operation during all daylight hours, unless otherwise authorized in writing by the Manager or his authorized representative.

7.03 CARE OF AREA. Tenant agrees that it will keep the Lease Premises in a neat, clean, safe, sanitary and orderly condition at all times, and free of all paper, rubbish, spills, and debris. Tenant, at its own expense, shall collect and deposit all trash and refuse at frequent intervals from the Lease Premises. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted outside enclosed areas on the Lease Premises.

7.04 COMPLIANCE WITH ALL LAWS AND REGULATIONS: OPERATIONS. Tenant understands that Section 6.11 applies to all actions governed by this Lease throughout the Term, and understands that it must meet the requirements of all applicable laws, including the Prevailing Wage ordinance and SBE and DBE requirements.

7.05 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. Tenant, in conducting any activity on the Lease Premises, 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.

The City shall have a right of access to the Lease Premises without prior notice to inspect the same to confirm that Tenant is using the Lease Premises 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 further testing and analysis 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.

7.06 STORAGE TANKS. Neither above ground nor underground storage

tanks will be permitted on the Lease Premises (this includes special enclosure equipment).

7.07 WASTE OR IMPAIRMENT OF VALUE. Tenant agrees nothing shall be done or kept on the Lease Premises 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 Lease Premises is being used to host an electricity grid-connected photovoltaic solar power plant.

7.08 STRUCTURAL OR ELECTRICAL OVERLOADING. Tenant agrees that nothing shall be done or kept on the Lease Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the System 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, Tenant agrees to immediately remedy the violation at Tenant's expense, as soon as reasonably practicable once Tenant becomes aware of such violation.

7.09 NOISE, ODORS, VIBRATIONS AND OTHER ANNOYANCES. Tenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Lease Premises or annoy, disturb or be offensive to others at the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, vapors, odors, lights and vibrations.

7.10 ACCESSIBILITY. Tenant 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. Tenant covenants and agrees not to encumber the Lease Premises or the City property without the prior written consent of the Manager, and to keep the Lease Premises free from all liens and encumbrances.

SECTION 8 UTILITIES, DRAINAGE, MAINTENANCE AND SERVICES

8.01 UTILITIES. Tenant, 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 on the Lease Premises. Tenant shall secure all necessary applications and permits for such connections and shall pay all application and permit fees, hook-up or tap fees. Tenant 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.

8.02 DRAINAGE. Tenant shall either be responsible for detaining on the Lease Premises 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 Manager and Tenant shall maintain such drainage facilities. Tenant agrees to insure that an agreement for drainage crossing or slope created by Tenant'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. Tenant 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.

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

A. Tenant shall keep the System 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;

B. Tenant 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 Lease Premises or to be disposed of improperly.

C. Tenant 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.

D. Tenant shall be responsible for the removal of snow and ice on the Lease Premises and on access road improvements solely to the extent Tenant needs to use the access road improvement in order to access the Lease Premises.

E. Tenant shall be responsible for the maintenance, replacement and upkeep of the grass, shrubs, trees and all landscaped areas on the Lease Premises.

F. The Manager or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Lease Premises. Tenant agrees to promptly discontinue or remedy any reasonably objectionable condition within five (5) days after written notice by the Manager or his authorized representative.

8.04 COMMON USE SERVICES. The Manager 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 Manager reserve the right to establish charges for common use services based upon documented actual costs. Trash, sewer, and deliveries will be common use services which Tenant may be required to use and pay its entire actual share; however, other common use services may be utilized at Tenant's option. Tenant agrees to pay the charges for those common use services which are utilized by Tenant.

8.05 INTERRUPTION OF SERVICES. Tenant 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 Tenant from any of its obligations hereunder, except as otherwise provided in Section 11.

SECTION 9 INSURANCE; PERSONAL LIABILITY; TAXES

9.01 INSURANCE. Tenant further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, insurance for general and professional liability, automobile, and worker's compensation in the amounts and on the form of insurance certificate specified on the attached Exhibit D.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, materially changed or modified in a manner that affects this Lease without 30 days prior written notice thereof having been given by certified mail, return receipt requested, to the Manager of Aviation, Airport Office Building, Denver International Airport, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policies shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance. In addition, a waiver of subrogation in favor of the City shall be attached to each of the policies. Tenant shall furnish separate certificates and endorsements for each subcontractor, if any. All coverage for subcontractors, if any, shall be subject to all of the requirements stated herein.

9.03 NO PERSONAL LIABILITY. No employee of the City shall be held

personally liable under this Lease or because of its execution or attempted execution.

9.04 TAXES, LICENSES, LIENS AND FEES. Tenant 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 Tenant occupancy and use of the Lease Premises (or any portion or component thereof). Tenant also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Land, the Lease Premises or improvements thereto, or any part thereof, by reason of any construction work or labor performed or materials furnished by any mechanic or materialman. Tenant agrees to furnish to the Manager, 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. Tenant 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 Lease Premises or improvements thereon which will in any way impair the rights of the City under this Lease.

SECTION 10 DEFAULT AND REMEDIES

10.01 TENANT DEFAULT. Tenant shall be in default under this Lease if Tenant:

- A. Fails to timely pay within thirty (30) days after such amount is due to the City the compensation, rent or any other payment required hereunder; or
- B. 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
- C. Transfers its interest under this Lease, 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
- D. Abandons, deserts or vacates the Lease Premises; or
- E. Suffers any lien or attachment (other than a memorandum of lease, and precautionary UCC financing statements per Section 6.14) to be filed against the Lease Premises, the Airport or the City's property because of any act or omission of

Tenant, and such lien or attachment is not discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Tenant; or

F. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Lease and such failure continues for a period of more than thirty (30) days after delivery by Manager 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 Tenant 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

G. Gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Tenant for its use under this Lease.

10.02 REMEDIES FOR THE CITY. If Tenant defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

A. The City may elect to allow this Lease 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

B. The City may cancel and terminate this Lease and repossess the Lease Premises, with process of law, and without liability for so doing, upon giving thirty (30) days written notice to Tenant and Tenant's Lender of its intention to terminate, at the end of which time all the rights hereunder of the Tenant shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. Notwithstanding the foregoing, Tenant shall be allowed only two notices of default hereunder which it may cure within the thirty (30) day time specified in this section. The third and any additional notice thereafter shall be cured by Tenant within fifteen (15) days and if Tenant 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 Tenant, and the City may, upon the date specified in such notice, reenter the Lease Premises and remove therefrom all property of the Tenant and store the same at the expense of the Tenant, or (2) elect to proceed under subparagraph C. below. If the City elects to terminate, Tenant 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 Tenant's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

C. The City may elect to reenter and take possession of the Lease Premises and

expel Tenant or any person claiming under Tenant subject to the time period set forth in Section 10.01(F), 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 Lease unless a written notice specifically so states; however, the City reserves the right to terminate the Lease at any time after reentry. Following reentry, the City may relet the Lease Premises, or any portion thereof, for the account of Tenant, 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.

Tenant 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, Tenant shall continue to be liable for all amounts due as rent under this Lease, 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 Lease by the City, the City, having credited to the account of Tenant any amounts recovered through reletting, shall refund, without interest, any amount which exceeds the rent, damages, and costs payable by Tenant under this Lease.

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

10.03 CROSS DEFAULT WITH POWER PURCHASE AGREEMENT. Notwithstanding anything to the contrary under this Lease or the Power Purchase Agreement, a default by any party under this Lease shall be an event of default under the Power Purchase Agreement. If the City fails to timely pay any amounts due under the Power Purchase Agreement subject to the conditions of the Power Purchase Agreement, Tenant shall have the right, but not the obligation, to terminate this Lease and the Power Purchase Agreement, and to compel the City to purchase the System from the Tenant by paying the Termination Value set forth in attached Exhibit C of the Lease.

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

10.05 ADMINISTRATIVE HEARING. Disputes arising out of this Lease shall be resolved by administrative hearing before the Manager following the procedures outlined in Denver Revised Municipal Code Section 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.

10.06 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.

10.07 CITY DEFAULT. City shall be in default under this Lease 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 Tenant may terminate this Lease and the City will pay the Termination Value as set forth in Ex C.

SECTION 11 DAMAGE, DESTRUCTION OR LOSS

11.01 DAMAGE TO OR DESTRUCTION OF LEASE PREMISES. If the System and any Site Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or such other cataclysmic event, the Tenant shall promptly remove all debris resulting from such damage to the System and any Site Improvements and at its sole discretion, may repair and/or reconstruct the System and any Site Improvements with due diligence, at its sole cost and expense, in accordance with the plans and specifications for the Lease Premises as they existed prior to such damage or in accordance with the current needs of the Tenant as approved by the Manager.

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, or water, rain or snow, which may come into or issue or flow from any part of the Airport or Airport Site, 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 Tenant each waive any and every claim for recovery from the other for any and all loss of or damage to the Lease Premises 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, Tenant agrees to give to each insurance company which has issued, or may issue, to the Tenant 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.

SECTION 12 MISCELLANEOUS PROVISIONS

12.01 ADVERTISING AND PUBLIC DISPLAYS. Tenant shall not install or have installed or allow to be installed upon or within the Lease Premises, without the prior written approval of the Manager or his authorized representative, 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 DIA Design Standards. Permission will not be granted for any advertising which fails to comply with DIA Design Standards or DIA Development Guidelines, or any advertising material, fixture or equipment which extends beyond the Lease Premises.

12.02 AGREEMENT BINDING UPON SUCCESSORS. This Lease, 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 Lease 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 Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system. The provisions of the attached Appendices 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 Lease without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Tenant may assign any of its rights, duties or obligations under this Lease (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 Tenant, or (iv) to a successor entity in a merger transaction.

B. With respect to an assignment pursuant to the immediately preceding section, the City acknowledges and agrees that, upon receipt of written direction by a financing-transaction assignee of the Tenant ("Lender"), and notwithstanding any instructions to the contrary from the Tenant, the City will recognize Lender, or any qualified third party operator or owner to whom Lender has reassigned the rights of the Tenant under this lease, as the proper and lawful lessee of the Lease Premises and as the proper and lawful successor to the Tenant with respect to access to the Lease Premises across or through the Land and fully entitled to receive the rights and benefits of the Tenant hereunder so long as Lender or its assignee performs the obligations of the Tenant 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 Tenant. 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.

In addition, the City agrees and consents as follows: (i) The City agrees to notify Lender in writing, at the address to be designated by Lender upon not less than five (5) business days' written notice to the City prior to any notice by the City hereunder, of any act or event of default of the Tenant under the Lease of which the City has knowledge that would entitle the City to cancel, terminate, annul, or modify the Lease or dispossess or evict the Tenant from the Lease Premises or otherwise proceed with enforcement remedies against the Tenant, and Lender shall have the same amount of time as the Tenant, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by the Tenant under the Lease; provided that in no event shall Lender be obligated to cure any such default; (ii) The City hereby consents to Lender accessing the Lease Premises and the Land for the purpose of inspecting the Collateral.

12.06 BOND ORDINANCES. This Lease is in all respects subject and subordinate to any and all the 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 Lease acknowledge and agree that all

property subject to this Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Tenant 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 Tenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Lease) not to claim depreciation or an investment credit with respect to any property subject to this Lease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

12.07 FORCE MAJEURE. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Lease to the extent such failure, delay or interruption is due to causes which were not reasonably foreseeable and beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Tenant to reduce or abate its obligation to pay the rent or compensation as provided herein.

12.08 INCONVENIENCES DURING CONSTRUCTION. Tenant 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 Tenant in its operation at the Airport. Tenant agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Tenant waives any right to claim damages or other consideration therefrom.

12.09 INDEPENDENT CONTRACTOR. The parties agree that Tenant 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 Lease shall be construed to mean or imply that Tenant is a partner, joint venturer, agent or representative of, or otherwise associated with, the City. Neither the City nor Tenant 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. All notices required to be given to the City or Tenant hereunder shall be in writing and sent by certified mail, return receipt requested, to:

City: Manager of Aviation
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-2065

with a copy to: Airport Property Office
Denver International Airport
8500 Peña Boulevard, Rm. 9870
Denver, Colorado 80249-2065

Tenant: Denver Solar IV LLC
2645 East 2nd Avenue Suite 206
Denver, CO 80206

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 Tenant or Manager.

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 Lease.

12.12 PATENTS AND TRADEMARKS. Tenant 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 Lease.

12.13 SECURITY. Tenant 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 Transportation Security Administration and Federal Aviation Administration, as they may be amended from time to time.

12.14 SEVERABILITY. If any provision in this Lease 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 Lease shall not be deemed to confer upon any third party or parties (except parties to whom the Tenant may assign this Lease in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any action or proceeding against either the City or the Tenant 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. Tenant, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Tenant from the City facilities or participating in City operations.

12.17 CITY SMOKING POLICY. Tenant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways.

12.18 NONDISCRIMINATION. In connection with the performance of work under this Lease, Tenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Tenant further agrees to insert the foregoing provision in all subcontracts hereunder.

12.19 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 Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Lease.

12.20 FINAL APPROVAL. This Lease 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.

END OF DOCUMENT

SIGNATURE PAGES FOLLOW

Contract Control Number: PLANE-201310161-00

Contractor Name: Denver Solar IV, 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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

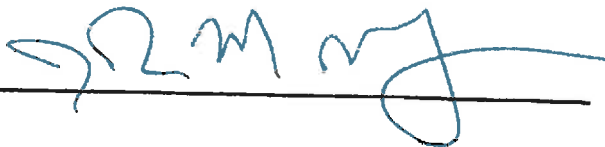
By _____

By _____



Contract Control Number: PLANE-201310161-00

Contractor Name: Denver Solar IV, LLC

By: 

Name: John Hereford
(please print)

Title: Partner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT "A"

**LEGAL DESCRIPTION FOR DIA
SOLAR IV LEASE AREA**

Date: March 7, 2013

A parcel of land situated in the Southwest Quarter of Section 4, Township 2 South, Range 65 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

Basis of Bearing: the South line of the Southwest Quarter of said Section 4, which bears South 89°03'32" East, a distance of 2652.30 feet, from the Southwest corner of said Section 4, represented by a 3-1/4" Aluminum Cap, PLS #4842 to the South quarter corner of said Section 4, represented by a 3-1/4" Aluminum Cap, PLS #34577.

Commencing at the Southwest corner of said Section 4;

Thence North 89°03'32" West, along the South line of said Section 4, a distance of 935.78 feet;

Thence North 00°31'52" East, a distance of 616.16 feet to the Point of Beginning of this description;

Thence continuing North 00°31'52" East, a distance of 656.38 feet;

Thence South 89°28'58" East, a distance of 730.00 feet;

Thence South 00°31'52" West, a distance of 656.38 feet;

Thence North 89°28'58" West, a distance of 730.00 feet to the Point of Beginning.

Said parcel of land contains 479,160 square feet or 11.000 acres.

See Exhibit "B"



Approved by: Michael H. Steffens, P.E.


3/8/13
Date

SCALE
1" = 200'

QUEENSBURG ST.
(ASPH)

656.38'

N00°31'52"E

DIA SOLAR IV LEASE AREA
479,160 square feet or
11.000 acres

656.38'

DENVER FIRE
DEPARTMENT
TRAINING FACILITY

POINT OF
BEGINNING

S00°31'52"W

N89°28'58"W

730.00'

113TH AVE.
(ASPH)

616.16'

SW 1/4, SEC. 4
T.2.S, R.65.W, 6TH P.M.

N00°31'52"E

SOLAR PANEL LEASE AREA
407,922 square feet or
9.365 acres

935.78'

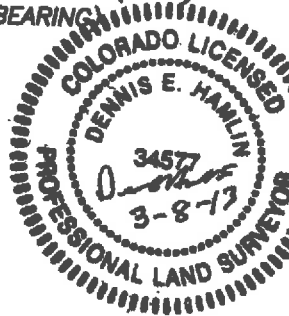
SOUTH LINE OF SW1/4
OF SEC 4

S89°03'32"E 2652.30' (A.M.)
(BASIS OF BEARING)

SOUTHWEST CORNER
SEC. 4, T2S, R65W
FND 3-1/4" ALUM CAP
STAMPED "LS #4842"

SOUTH QUARTER CORNER
SEC. 4, T2S, R65W
FND 3-1/4" ALUM CAP
STAMPED "LS #34577"

I HEREBY CERTIFY THAT THIS EXHIBIT WAS
PREPARED UNDER MY DIRECT
SUPERVISION.



Dennis E. Hamlin

DENNIS E. HAMLIN, PLS
COLO. REGISTRATION NO. 34577

NOTE: THIS DOES NOT REPRESENT A MONUMENTED LAND
SURVEY. NOR DOES IT REPRESENT A TITLE SURVEY BY
THIS SURVEYOR. IT IS INTENDED ONLY TO DEPICT THE
ATTACHED DESCRIPTION.

Michael H. Steffens
MICHAEL H. STEFFENS, PE
MANAGER OF CONSTRUCTION

3/8/13
DATE



CITY AND COUNTY OF DENVER
DEPARTMENT OF AVIATION
DENVER INTERNATIONAL AIRPORT

DEVICPN

EXHIBIT C

PURCHASE OPTION SUMMARY SHEET

DIA Solar 4 Termination Value Schedule

Year	Purchase Option	Termination Value
1		\$5,666,828
2		\$5,182,373
3		\$4,748,697
4		\$4,309,001
5		\$3,842,978
6	Fair Market Value	\$3,351,002
7		\$3,233,757
8		\$3,095,222
9		\$2,935,618
10	Fair Market Value	\$2,752,762
11		\$2,544,265
12		\$2,307,521
13		\$2,039,683
14		\$1,737,640
15	Fair Market Value	\$1,397,998
16		\$1,190,011
17		\$1,034,792
18		\$879,573
19		\$724,354
20	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.

**CITY AND COUNTY OF DENVER
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201310161 – Solar Ground Lease

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy ___ Project ___ Location ___, if applicable

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. **If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.**

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

EXHIBIT E

DESIGN STANDARDS, CONSTRUCTION PROCEDURES and DIA PERFORMANCE SPECIFICATIONS

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 effected 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. Wages: The Tenant shall include in its agreements with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics, and laborers in accordance with the "Agreement of Fair Employment and Work Stabilization for New Denver Airport," which agreement provides for payment according to rates and classifications established under the federal Davis-Bacon Act and Denver

Revised Municipal Code Section 20-76, whichever is greater. The Tenant further agrees, if requested by the City, to fully comply with the procedural requirements of Denver Revised Municipal Code Section 20-76 by requiring its general contractors and their subcontractors of any tier to submit to the City true and correct copies of the payroll records of all workers, laborers, and mechanics employed.

I. 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.

J. 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.

L. 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 DIA ENVIRONMENTAL REQUIREMENTS

Section 1. General Requirements. Tenant, in conducting any activity on DIA 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 DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA'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: DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA'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 DIA premises. Tenant shall identify all hazardous materials to be used at DIA 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 DIA 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 DIA.

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 DIA 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 DIA, 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 DIA 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 DIA 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.

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Tenant, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

8. The Contractor for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

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

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

APPENDIX NO. 2

DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

DBE Obligation. The City and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 26.5 defines a DOT-assisted contract as “any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.” “Contractor” means one who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit, or airport program.