**Appendix D: DEN Legal Considerations for EV Charging RFA:**

Regarding liability related to the damage of equipment on DEN property, the airport has governmental immunity and limitations on liability from the Colorado Governmental Immunity Act.

Insurance requirements for the vendor and site will be determined by the DEN Risk Manager.

Confidentiality Issues: DEN is subject to the Colorado Open Records Act and has limited ability to protect confidentiality. We can agree to some nondisclosure, but we are subject to CORA.

**Clauses to add: As appendix**

The License granted is not exclusive, and the City specifically reserves the right to grant such other licenses, rights, or privileges across, on, or pertaining to the License Property to such persons and for such purposes as Denver may, in its sole discretion, select, so long as it does not unreasonably interfere with Licensee’s rights under this agreement.

**FEES**.

A. Fee for License Property. As a fee for the use of the License Property, Licensee shall pay, in advance and without offset, deduction, or abatement, the amount of ------------------- Dollars ($------.00). The full fee shall be due and payable to DEN 30 days after the execution of this License Agreement. Licensee understands and agrees that no prorated adjustment of the fee paid will be made even if this License is terminated before its stated Term.

B. Payment of Fees. All sums payable to City shall be made payable to the "Airport Revenue Fund” and delivered to Executive Suite, Airport Office Building, 8500 Peña Blvd. Denver International Airport, Denver, Colorado 80249-6340, or such other place as the City may hereafter designate by notice in writing to Licensee. Any check given to the City shall be received by it subject to collection, and Licensee agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney fees. Any payment not made to City when due shall accrue interest at 18% per annum commencing on the fifth calendar day after the date such amount is due and owing until paid to City.

**CITY'S RIGHTS**. City shall retain all its rights to the use, occupancy, and ownership of the License Property; and such use, occupancy and ownership shall not be interfered with by the Licensee’s exercise of the rights granted hereunder during the Term, except to the extent interference shall be necessary to exercise the rights granted by this license; provided, however, that Licensee shall reimburse City for any damage that results from such exercise of its rights. The rights and privileges granted herein are subject to prior easements, rights of way and other matters affecting title. City specifically reserves for itself and other tenants, licensees, and assignees of City, without limitation, the right to cross the License Property, the right to place equipment or other utilities above, across and within the License Property, and all rights which do not unreasonably interfere with Licensee's use of the License property.

**CONSTRUCTION BOND.** Prior to the commencement of any new construction related to the Facilities, Licensee shall deliver to the CEO, and maintain in effect throughout the construction period, a construction performance and payment bond in a sum not less than 100% of the construction contract price, including restoration. Said bond shall guarantee to City prompt and faithful performance of the construction contract, including restoration of the License Property and any Temporary Construction Property, and prompt payment by Licensee to its contractors and by Licensee’s contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by contractor(s), subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect the City from any liability, losses or damages arising therefrom. 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 the form and with conditions as provided in DIA Development Guidelines.

**REQUIREMENTS FOR PERFORMING ACTIVITIES ON PROPERTY**.

 A. Coordination. Licensee agrees to coordinate its work performed on the Airport with the operational requirements of the Airport, and all work movement of persons and equipment on areas used by aircraft shall be subject to regulations and restrictions established by the Airport authorities. Licensee shall coordinate access and work performed under this License with the Aviation Land Manager, or such other person as the CEO may designate. The Land Manager shall provide the needed contact information to Licensee as soon as practicable after execution of this License. Access of people and equipment to the License Property shall be in accordance with instructions received from the Aviation Land Manager.

 B. Notice of Surface Activities. For activities during the Term requiring surface access only, Licensee shall notify the Aviation Land Manager at least 48 hours prior to the start of any work. The City will provide any necessary instructions regarding access logistics within a reasonable time after Licensee gives such notice. No access fee is required for such activities.

 C. Notice and Payment for Intrusive Activities. For activities during the Term requiring disturbance deeper than six inches below the surface of the land (*e.g.,* trenching, potholing, excavation, *etc.*, collectively “**Intrusive Activities**”), Licensee shall notify the Aviation Land Manager at least three weeks prior to the start date of the Intrusive Activity, and shall provide such information as the Land Manager may reasonably require. An Intrusive Activity access fee of $1500 shall be paid by Licensee to cover DIA’s administrative costs.

1. If Licensee performs or allows others to perform Intrusive Activities without the required notice or fee payment, the Parties agree the liquidated damages for such breach of this section shall be $3000.

 D. Permits; FAA Review and Approval. Licensee shall timely acquire all necessary federal, state, local, and airport permits, and comply with all permit requirements, including but not limited to any required site access permits, FAA 7460s, or other approvals. Licensee understands that activities involving vehicles, equipment, or other items taller than 20’ may require FAA review and approval, and Licensee is responsible to allowing sufficient time for such review to occur.

**NO OPEN CUT ON ROADS**. Licensee shall not, at any time, open cut or otherwise damage Peña Boulevard, its frontage roads, and other airport service roads, except that Licensee may open cut the frontage roads and airport service roads in the event of an emergency situation, in which event Licensee shall as soon as possible notify City of said actions and shall, at Licensee's sole expense, repair any damage caused by such actions.

**OBSTRUCTIONS**. Licensee agrees that no obstructions shall be cleared from the License Property without the prior written consent of the CEO.

**RESTRICTION ON ALTERATIONS**. Except in emergency circumstances, no alterations, improvements or changes shall be made to the Facilities without the prior written approval of the CEO.

**OPERATION AND MAINTENANCE**. Licensee shall maintain and operate the Facilities in a safe and good condition. Licensee must comply with all conditions imposed by the CEO; provided, that such conditions are consistent with all existing laws and regulations including those pertaining to the U.S. Department of Transportation and the Colorado Department of Transportation.

**RESTORATION**. Licensee agrees that after construction of the Facilities, and after any maintenance, repair, replacement or removal of any of the Facilities, Licensee shall restore the surface of the City's property to the grade and condition it was in immediately prior to said construction, maintenance, repair, replacement or removal. Licensee also agrees to restore and repair any paving and fences which are damaged, modified or altered by Licensee during said construction, maintenance, repair, replacement or removal. Licensee further agrees to replace any topsoil removed from any areas on the City's property, to reseed the disturbed area so as to prevent erosion, to restore landscaping, as nearly as reasonably possible, to its original condition, and to remove any excess earth resulting from said construction, maintenance, repair, replacement or removal, at Licensee's sole cost and expense. Licensee shall remove all Hazardous Materials, as defined below, from the City's property, and shall otherwise comply with the provisions of the Environmental Requirements paragraph below, as part of Licensee's restoration obligations hereunder.

**AIRPORT MASTER PLAN.** Licensee agrees that it will, at its own cost and expense, relocate the Charge Station to a new location provided by Licensor if such relocation is determined by the DEN CEO to be necessary for Airport purposes. Licensee shall make such relocation within 90 days and without cost to the Airport after being given written notice to do so by the CEO. All terms and conditions of this License shall apply to the new location.

**INSURANCE**.

A. Licensee shall, prior to performing work on Aviation Property, obtain and keep in force insurance policies as described in the City’s form of insurance certificate, attached to this Agreement as **Exhibit B** and incorporated herein. The certificate specifies the minimum insurance requirements Licensee and any of its contractors must satisfy in order to perform work allowed under this Agreement on Aviation Property.

B. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Licensee. Licensee shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

C. The parties hereto understand and agree that the City and County of Denver, its officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or similar protections otherwise legally available to the City and County of Denver, its officers, officials, and employees.

**INDEMNIFICATION**.

A. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents, and employees against all liabilities, claims, judgments, suits, or demands for damages to persons or property to the extent caused by work performed under this License by Licensee or Licensee’s agents, representatives, subcontractors, or suppliers, including worker's compensation claims, or its use or occupancy of any portion of Aviation Property (“Claims”); provided, however, that Licensee’s obligation herein shall not apply to the extent said Claims result from any negligent or willful acts or omissions of the City, its employees, officers, agents, and volunteers. This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

B. Licensee’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether suit has been filed and even if Licensee is not named as a Defendant.

C. Licensee shall control defense of such Claims and City shall provide reasonable cooperation to Licensee. Licensee will defend any and all Claims that may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.

D. Insurance coverage requirements specified in this License shall in no way lessen or limit the liability of Licensee under the terms of this indemnification obligation. Licensee shall obtain, at its own expense, any additional insurance that it deems necessary.

E. This defense and indemnification obligation shall survive for three (3) years after expiration or termination of this License.

**LIMITATION ON LIABILITY**. Licensee agrees that no liability shall attach to City for any damages or losses incurred or claimed by Licensee or any other person or party on account of the construction or installation of the Facilities by Licensee. Licensee agrees that it shall not in any way seek damages or make any claims against the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or Airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages.

**ENVIRONMENTAL MATTERS**.

A. Licensee shall comply with all applicable local, state, and federal laws of any governmental body having jurisdiction over the License Property addressing pollution or protection of human health, natural resources or the environment and all implementing regulations including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the “Clean Water Act”); the Clean Air Act, 42 U.S.C. § 7401 et seq. the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Atomic Energy Act, 42 U.S.C. § 2011 et seq. (collectively referred to as “Environmental Laws”). For the purposes of this Agreement, Hazardous Materials means any substance to the extent presently regulated, listed, defined, designated or classified as hazardous, toxic, or radioactive under any Environmental Law, including radionuclides and petroleum.

B. Licensee shall acquire all necessary federal, state, and local environmental permits, and comply with all permit requirements, including but not limited to the Environmental Guidelines and EMS, <http://business.flydenver.com/community/enviro/documents/es301.pdf>)*.* Licensee shall also comply with all City requirements regarding environmental controls, including erosion and sedimentation control.

C. Licensee assumes liability as generator of, and assumes title to any and all Hazardous Materials that Licensee generates, stores, disturbs, removes, excavates, spills, releases or leaks related to Licensee's activities or operations at the Airport and/or the License Property.

D. In the case of a release, spill, discharge, leak or disposal of Hazardous Materials as a result of activities on the License Property by Licensee or any of its contractors, subcontractors, agents or representatives, Licensee shall immediately control and shall thereafter diligently remediate all contaminated property in accordance with all applicable federal, state, local, and airport laws and regulations, including those posted at <http://business.flydenver.com/info/research/rules/index.htm>. The City agrees to cooperate with Licensee and not hinder Licensee if Licensee is in compliance with this License. Licensee agrees to share its plans for remediation with the City. Licensee shall reimburse the City for any penalties imposed against the City for the release, and shall reimburse the City for any costs and expense, including without limitation reasonable attorney's fees, directly incurred by the City as a result of the release or disposal by Licensee or its contractors, subcontractors, agents and representatives of any Hazardous Materials on the Airport, or the License Property.

E. Licensee shall immediately notify the City in writing of any release, spill or leak, the control and remediation response actions taken by Licensee, and any responses, notifications or actions taken by any federal, state or local agency with regard to such release, spill or leak. Licensee shall make available to the City for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that Licensee has prepared pursuant to any requirement under this Section. If there is a requirement to file any notice or report of a release or threatened release of any Hazardous Materials at, on, under or migrating from the Airport, or the License Property, Licensee shall provide copies of all results of such report or notice to the City.

F. At the City's reasonable request, Licenses shall conduct testing and monitoring as is necessary to determine whether any Hazardous Materials have entered the soil, groundwater, or surface water on or under the Airport, or the License Property. Licensee shall provide copies of all results of such testing and monitoring to the City.

G. The City has implemented an Environmental Management System (EMS) for the Airport. To comply with the EMS’s requirements, Licensee agrees to submit two (2) copies of its Pipeline Response Plan (controlled or uncontrolled) pursuant to 49 CFR Part 194, if such a plan is required by law. Any plan must include the DIA Communications Center (303)342-4200 for reporting any suspected or confirmed spills/releases on the Airport. In addition, any other written reports prepared by or on behalf of the Licensee pursuant to 49 CFR Part 195 must be submitted to the Airport’s Environmental Services Division. These plans must provide the Environmental Services Division with environmental contact information including the individual’s name, title, email and mailing address, and telephone number.

H. All of Licensee's underground pipelines and any other underground metallic structures installed upon the License Property shall be compliant with the Airport's area-wide cathodic protection program, including the removal, addition or modifications of underground tanks, piping and other metallic structures. Further, such cathodic protection system shall be in compliance with applicable government regulation.

I. Licensee shall adhere to Licensee’s field health and safety practices and procedures and shall conduct all aspects of construction, alteration, repair, replacement, operation or removal of an underground petroleum fuel pipeline performed on the Airport in accordance with all applicable laws, regulations and ordinances including without limitation all OSHA requirements and shall utilize OSHA trained and certified hazardous waste site workers and managers as appropriate.

J. The City has not entered into, and, to the knowledge of the City, is not subject to any agreements, consents, orders, decrees, judgments or other binding consensual agreements or commitments pursuant to Environmental Laws that impose conditions that prevent the develop or operation of Licensee’s Pipeline Facility. The City represents that the License Property has no known prior contamination of any Hazardous Materials.

**TAXES, LICENSES, LIENS, AND FEES**. Licensee agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the License Property and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Licensee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Facilities, License Property or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman for Licensee, as contractors or subcontractors. Licensee agrees to furnish to the Aviation Land 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. Licensee 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, mortgage, judgment or execution to be filed against the Facilities, License Property or improvements thereon which will in any way impair the rights of the City under this License.

**COMPLIANCE WITH ALL LAWS AND REGULATIONS**. Licensee agrees to comply with all applicable federal, state and local laws, regulations and guidelines, including without limitation DIA Design Standards. Further, all general rules and regulations adopted by the City or the CEO for the construction, management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Licensee and its contractors shall comply with all Airport and construction site access requirements, and shall obtain and pay for all required DIA site access permits and badges. Failure to comply will be grounds for the City to suspend construction or deny access.

**BOND ORDINANCE**. This License and the rights granted or conveyed hereby are in all respects subject and subordinate to any and all City bond ordinances applicable to the City's airport system and to any other bond ordinances which amend, supplement or replace such bond ordinances. The parties to this License acknowledge and agree that all property subject to this License which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Licensee 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 Licensee agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this License) not to claim depreciation or an investment credit with respect to any property subject to this License 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.

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

**SECURITY**. Licensee shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City, including Airport security regulations and regulations of the Federal Aviation Administration, including as they may be amended from time to time.

**THIRD PARTIES**. This License does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against either the City or the Licensee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

**ADMINISTRATIVE HEARING; COLORADO LAW AND VENUE**.

A. Administrative Hearing. Disputes arising under or related to this License shall be resolved by administrative hearing, which shall be conducted in accordance with the procedures set forth in Denver Revised Municipal Code Section 5-17. The Parties hereto agree that the CEO’s determination resulting from said administrative hearing shall be final, subject only to the right to file a request for reconsideration and/or appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

 B. Governing Law; Venue. This License and performance hereunder shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action that may be file in court shall be in the District Court in and for the City and County of Denver.

**NONDISCRIMINATION.** In connection with the performance of work under this License, Licensee 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 Licensee further agrees to insert the foregoing provision in all subcontracts hereunder.

**DIVISION OF SMALL BUSINESS OPPORTUNITY (“DSBO**”). Licensee agrees to comply with the Minority Business Enterprise (“MBE”) and Women Business Enterprise (“WBE”) requirements of Article III, Divisions 1 and 3 of Chapter 28 of the Denver Revised Municipal Code (“MBE/WBE Ordinance”), or applicable successor ordinance, to the extent the MBE/WBE Ordinance applies to Licensee’s activities under this License. Licensee agrees to comply with rules and regulations issued by the Director of the DSBO, who may set goals for design and construction of the work permitted under this agreement in accordance with the MBE/WBE Ordinance. Licensee shall meet, or make a good faith effort to meet, any such goals.

**PROMPT PAY.** For all work on License Property, Grantee is subject to D.R.M.C. Section 20-112 wherein Grantee is to pay its subconsultants in a timely fashion. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (D.R.M.C. Sections 20-107 through 20-118).

**PREVAILING WAGE.** Licensee shall comply with Denver’s Prevailing Wage Ordinance, D.R.M.C. Section 20-76 et seq., to the extent such Ordinance applies to its activities on License Property. Licensee is prohibited from hiring any subcontractor to work on Aviation Property that is currently debarred by Denver in accordance with D.R.M.C § 20-77.

**CITY'S EXECUTION OF LICENSE.** This License is expressly subject to, and shall not be or become effective or binding on the City, until approved by City Council and fully executed by all signatories of the City and County of Denver.