

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM**  
**DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** November 27, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** Irene D. Ramirez, P.E., Interim City Engineer, 541-4428  
Mass Transit Department, Raul Escobedo, 534-5810

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Discussion and action to award Solicitation No. 2012-182R for Fuel Processing Provider-Compressed Natural Gas (CNG) Fuel for City Vehicles and Related Lease of City Property for Natural Gas Fuel Processing Facility to Mansfield Gas Equipment Systems Corporation, a wholly owned subsidiary of Mansfield Energy Corporation, for the design, construction and operation of three CNG fuel processing facilities on property leased from the City, for the fueling of City owned and City contracted vehicles.

Department:	Engineering and Construction Management
Award to:	Mansfield Gas Equipment Systems Corporation
Construction Time for Completion:	December 1, 2013
Term of Agreement:	10 years
Option:	one (1) additional five (5) year term
Districts:	All

This is a Request for Proposals. The Engineering and Construction Management Department recommends award as indicated to Mansfield Gas Equipment Systems Corporation, the highest ranked proposer based on evaluation criteria established for this procurement.

And that the City Manager be authorized, after review by the City Attorney's Office, to execute a Natural Gas Fuel Processing Agreement, any related contract documents and agreements necessary to effectuate this award, and the following leases:

A Fuel Compressing Station Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee") for the following described property:

64,400 square feet, more or less, being a portion of Lot 2, Block 2, Butterfield Trail Aviation Park, Unit Two, El Paso, El Paso County, Texas; and

Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee"), for the following described property:

5,000 square feet of a portion of Section 17, Block 81, Township 2, T&P RR Co. Surveys, El Paso County, Texas, municipally numbered and known as 5081 Fred Wilson Avenue; and

A Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee"), for the following described property:

9,100 square feet of a portion of Lot 1, Municipal Center Subdivision as recorded in Deed Book No. 2499308, Pg. 16, Instrument No. 49308, County Clerk, El Paso County, Texas, municipally numbered and known as 1059 Lafayette Dr.

**BACKGROUND / DISCUSSION:**

Provide Compressed Natural Gas (CNG) fuel for City-owned vehicles and serve as the City's CNG Fuel processor. CNG fuel primarily will be provide to the Sun Metro bus fleet which when in full service will include over 300 buses include articulated buses. Other city vehicles will include fleets from Solid Waste, Department of Transportation and other departments.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

#    . Discussion and action to award Solicitation No. 2012-182R for Fuel Processing Provider-Compressed Natural Gas (CNG) Fuel for City Vehicles and Related Lease of City Property for Natural Gas Fuel Processing Facility to Mansfield Gas Equipment Systems Corporation, a wholly owned subsidiary of Mansfield Energy Corporation, for the design, construction and operation of three CNG fuel processing facilities on property leased from the City, for the fueling of City owned and City contracted vehicles.

Department: Engineering and Construction Management  
Award to: Mansfield Gas Equipment Systems Corporation  
Time for Completion: December 1, 2013  
Term of Agreement: 10 years  
Option: one (1) additional five (5) year term

**Districts:**

And that the City Manager be authorized, after review by the City Attorney's Office, to execute a Natural Gas Fuel Processing Agreement, and any related contract documents and agreements necessary to effectuate this award.

This is a Request for Proposals. The Engineering and Construction Management Department recommends award as indicated to Mansfield Gas Equipment Systems Corporation, the highest ranked proposer based on evaluation criteria established for this procurement.

[Engineering and Construction Management, Irene D. Ramirez, (915) 541-4428]

[Deputy City Manager of ~~Mobility Services~~, Jane Shang, (915) 541-4686]

*R. All.*

*See memo*

# A. Discussion and action to award Solicitation No. 2012-182R for Fuel Processing Provider-Compressed Natural Gas (CNG) Fuel for City Vehicles and Related Lease of City Property for Natural Gas Fuel Processing Facility to Mansfield Gas Equipment Systems Corporation, a wholly owned subsidiary of Mansfield Energy Corporation, for the design, construction and operation of three CNG fuel processing facilities on property leased from the City, for the fueling of City owned and City contracted vehicles.

Department: Engineering and Construction Management  
Award to: Mansfield Gas Equipment Systems Corporation  
Time for Completion: December 1, 2013  
Term of Agreement: 10 years  
Option: one (1) additional five (5) year term

**Districts:**

*CITY*  
This is a Request for Proposals. The Engineering and Construction Management Department recommends award as indicated to Mansfield Gas Equipment Systems Corporation, the highest ranked proposer based on evaluation criteria established for this procurement.

And that the City Manager be authorized, after review by the City Attorney's Office, to execute a Natural Gas Fuel Processing Agreement, any related contract documents and agreements necessary to effectuate this award, and the following leases:

# B.1. A Fuel Compressing Station Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee") for the following described property:

64,400 square feet, more or less, being a portion of Lot 2, Block 2, Butterfield Trail Aviation Park, Unit Two, El Paso, El Paso County, Texas;

# B.2. Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee"), for the following described property:

5,000 square feet of a portion of Section 17, Block 81, Township 2, T&P RR Co. Surveys, El Paso County, Texas, municipally numbered and known as 5081 Fred Wilson Avenue, and .

# B.3. A Lease by and between the City of El Paso ("Lessor") and Mansfield Gas Equipment Systems Corporation ("Lessee"), for the following described property:

9,100 square feet of a portion of Lot 1, Municipal Center Subdivision as recorded in Deed Book No. 2499308, Pg. 16, Instrument No. 49308, County Clerk, El Paso County, Texas, municipally numbered and known as 1059 Lafayette Dr.

[Engineering and Construction Management, Irene D. Ramirez, (915) 541-4428]

[Deputy City Manager of Mobility Services, ~~Jane Shang~~, (915) 541-4686]

*NA*

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

NATURAL GAS  
FUEL PROCESSING FACILITY  
AGREEMENT

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "Owner", and MANSFIELD GAS EQUIPMENT SYSTEMS CORPORATION (MGES), a Georgia corporation and wholly owned subsidiary of Mansfield Energy Corporation, hereinafter referred to as the "Contractor".

WHEREAS, the Owner desires to engage the Contractor to design, construct, commission, operate and maintain three Compressed Natural Gas (CNG) fuel processing facilities to serve the City of El Paso's fleet of CNG vehicles as further described herein and hereinafter referred to as the "Project"; and

WHEREAS, the Contractor has been selected to perform such services as required by the Owner, and the Contractor was selected through the Owner's selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Contractor agree as follows:

ARTICLE I  
ATTACHMENTS

1.1 The attachments listed below and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment "A"	Fuel Processing Provider-Compressed Natural Gas (CNG) Fuel for City Vehicles and Related Lease of City Property for Natural Gas Fuel Processing Facility, Solicitation No. 2012-182R, Dated February 21, 2012.
Attachment "B"	Proposal from Mansfield Gas Equipment Systems Corporation (MGES) dated April 23, 2012.
Attachment "C"	Email from Owner dated June 6, 2012 requesting changes and Best and Final Offers.
Attachment "D"	MGES response to request for additional information dated June 19, 2012.
Attachment "E"	Performance and Payment Bonds
Attachment "F"	Certificate of Insurance

## ARTICLE II SCOPE OF WORK

2.1 The Owner hereby agrees to retain the Contractor and the Contractor agrees to design, construct, commission, operate and maintain three Compressed Natural Gas (CNG) fuel processing facilities on property leased from the Owner, pursuant to the terms, conditions and specifications set forth in Owner's Solicitation No. 1012-182R Fuel Processing Provider-Compressed Natural Gas (CNG) Fuel for City Vehicles and Related Lease of City Property for Natural Gas Fuel Processing Facility dated February 21, 2012 (the "Solicitation") attached hereto as **Attachment "A"**, Contractor's Proposal dated April 23, 2012 (the "Proposal") attached hereto as **Attachment "B"**, Owner's email to Proposers dated June 6, 2012 requesting changes and Best and Final Offers ("BAFO") attached hereto as **Attachment "C"** and Contractor's Response to Owner's Request for Additional Information dated June 19, 2012 (the "Additional Information") attached hereto as **Attachment "D"**, in a manner satisfactory to the Owner and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

2.2 Concurrent with the execution of this Agreement, Contractor shall enter into three separate Leases with the City of El Paso for portions of the following three sites: a) Montana Avenue and Global Reach (the "Airport site"), b) 5081 Fred Wilson Avenue (the "LIFT site") and c) 1059 Lafayette Drive (the "MSC site") This Agreement shall automatically terminate upon the termination of the Airport Lease. Likewise, the three Leases shall stipulate the automatic termination of the Leases upon termination of this Agreement.

2.3 In the event of any inconsistency between the provisions of this Agreement, the Solicitation, the Proposal, the Additional Information or the Leases, the controlling documents shall be in the following order of precedence: (a) this Agreement; (b) the Solicitation; (c) the Additional Information; (d) the Proposal; (e) the Airport Lease; (f) the MSC Lease; and (g) the LIFT Lease.

## ARTICLE III TERM

3.1 The term of this Agreement is ten (10) years from the Effective Date. Contractor shall complete construction of all three fuel processing facilities and all three fuel processing facilities shall be fully operational by December 1, 2013. The City, in its sole discretion may extend this Agreement for one (1) additional five (5) year term by giving written notice to the Contractor 120 days before the expiration of the original term.

## ARTICLE IV COMPENSATION

4.1 Contractor shall be compensated through a fee charged to Owner for each Diesel Gallon Equivalent (DGE) delivered to Owner, at the rates set forth in the Proposal and amended by the Additional Information, for the term of the Agreement and any option period awarded, as follows:

Airport Site – minimum capacity of 3,475 scfm: Two compressors with 1,800 scfm capacity

Airport Site	<u>Up to 4 million DGE per year</u>	<u>More than 4 million DGE per year</u>
Electrical	\$0.0170	\$0.0155
Natural Gas*	\$0.0489	\$0.0483
O&M, Capital, Debt Service	\$0.2016	\$0.1800
<b>Total</b>	<b>\$0.2675</b>	<b>\$0.2438</b>

LIFT Site – minimum capacity of 1,190 scfm: Two compressors with 616 scfm capacity

Lift Site	<u>Up to 900,000 DGE per year</u>	<u>More than 900,000 DGE per year</u>
Electrical	\$0.0680	\$0.0675
Natural Gas*	N/A	N/A
O&M, Capital, Debt Service	\$0.3669	\$0.3486
<b>Total</b>	<b>\$0.4349</b>	<b>\$0.4160</b>

MSC Site – minimum capacity of 760 scfm: Two compressors with 395 scfm capacity

MSC Site	<u>Up to 150,000 DGE per year</u>	<u>More than 150,000 DGE per year</u>
Electrical	\$0.1081	\$0.0961
Natural Gas*	N/A	N/A
O&M, Capital, Debt Service	\$1.8607	\$1.3185
<b>Total</b>	<b>\$1.9688</b>	<b>\$1.4146</b>

\*Natural Gas Cost reflecting above for Airport Site is the cost to run the natural gas driven compression equipment at this site.

4.2 Owner agrees that if new electric or gas rate tariffs are adopted during the term of the Agreement or any option period awarded, that the portion of the rate attributable to electric or gas rates, charged for each DGE delivered, shall increase by the same percentage as the gas or electric tariff increase.

4.3 Contractor agrees that the Operations, Maintenance, Capital and Debt Service portion of the rate charged for each DGE delivered may be escalated on an annual basis on the anniversary of the Agreement based on the U.S. City Average All Urban Consumer Price Index (CPI).

4.4 The Contractor shall bill the Owner not more often than monthly, through written invoice. Payments shall be made to Contractor within thirty (30) days following acceptance by Owner of a properly prepared invoice.

4.5 Owner and Contractor agree that any and all alternative fuel tax credits associated with the delivery of CNG under this Agreement shall accrue to the Owner.

**ARTICLE V  
MINIMUM NOTICE STATEMENT**

**5.1** It is mutually understood and agreed by Contractor and Owner that Contractor shall make provisions to accommodate Owner's future growth. Owner agrees to give Contractor 120 days notice that Owner expects to exceed 120% of the volumes set forth in the Solicitation.

**ARTICLE VI  
PERFORMANCE AND PAYMENT BONDS**

**6.1** Prior to the execution of this Agreement, Contractor, at its own cost and expense, shall cause to be made, executed, and delivered to Owner, on the forms attached hereto as **Attachment "E"**, the bonds specified herein.

**Performance Bond.** Prior to the execution of this Agreement, a performance bond in a sum equal to the full amount of the anticipated construction costs for all three CNG fuel processing facilities. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Owner against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Contractor to perform completely the work described in the approved final plans and detailed specifications.

**Payment Bond.** Prior to the execution of this Agreement, a payment bond with Contractor as principal, in a sum equal to the full amount of the anticipated construction costs for all three CNG fuel processing facilities. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of the construction of the three CNG fuel processing facilities.

**6.2** In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Owner will require, as a condition to accepting the bond(s); a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus.

**6.3** The required bonds shall be executed only by a surety company that is authorized to write surety bonds in Texas. The surety company providing the Payment Bond shall designate an agent resident who resides within the County of El Paso to whom any requisite notices may be delivered and with whom service of process may be rendered in matters arising out of surety ship.

**ARTICLE VII  
INSURANCE REQUIREMENTS**

7.1 Prior to the execution of this Agreement, Contractor shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below.

**Worker's compensation insurance** and disability benefits liability insurance required by Texas State law covering all of the employees of Contractor.

**Employer's liability insurance** required by Texas State law covering all the employees of Contractor.

**Commercial General Liability and Property Damage Insurance** with contractual liability and project completed operations coverage with combined single limit for bodily injury, and property damage with limits of not less than ten million dollars (\$10,000,000.00).

Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

**Commercial Automobile Liability Insurance** endorsed for any auto with limits of One Million Dollars (\$1,000,000.00) combined single limit.

**Excess liability insurance** above the required comprehensive general, automobile and employer's liability insurance in the amount of fifteen million dollars (\$15,000,000.00).

**All Risk Physical Damage Insurance** covering loss, damage, or destruction to the facility, (including machinery coverage and builder's risk insurance) in an amount equal to the full replacement value of the Facilities.

**Builder's Risk Insurance**, in an amount equal to the full replacement value of the facility, and

**Comprehensive Pollution Liability Insurance** in amounts as reasonably set from time to time by Owner, but not less than Three Million Dollars (\$3,000,000).

Said insurance shall be with a solvent insurance company authorized to do business in Texas and with an A.M. Best Rating of A-VII or better.

The City of El Paso shall be named as an Additional Insured on all insurance policies except Worker's Compensation Insurance Coverage, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

Builder's Risk shall apply only during the construction of the proposed CNG fuel processing facilities. All other insurance requirements apply both during the construction and the terms of each of the three separate property leases.

Commercial general liability and property damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager. The general liability coverage under all the leases shall be in the amount of ten million dollars (\$10,000,000.00) for all facilities combined.

## ARTICLE VIII INDEMNIFICATION

**8.1 Contractor or its insurer shall INDEMNIFY, DEFEND AND HOLD the Owner, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the Owner as required by the City Charter or any law, the Owner will promptly forward to Contractor every demand, notice, summons or other process received by the Owner in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the Owner all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the Owner in actions defended by Contractor pursuant to this section along with all attorney's fees and costs incurred by the Owner including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The Owner, at its election, shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The Owner shall not be responsible for any loss or damage to the Contractor's property from any cause.**

## ARTICLE IX TERMINATION

**9.1 Termination for Convenience.** If Owner determines in its sole discretion that it is necessary or desirable that this Agreement be terminated without regard to default by Contractor, then Owner may so terminate this Agreement for convenience. If Owner terminates this Agreement for convenience, it shall automatically, and without further notice, construe

termination of the Airport site Lease, the LIFT site Lease and the MSC site Lease, entered into concurrently with this Agreement. In any such termination for convenience, Owner shall compensate Contractor for its reasonable damages arising from said termination. For purposes of this provision, such reasonable damages shall be exclusively defined as Contractor's unamortized cost of Contractor Infrastructure Improvements and Leasehold Improvements incurred after the Effective Date of this Agreement. The cost shall be amortized on an annual straight line basis over the initial 10 year term of the Agreement. Owner shall have no obligation or liability to pay any claim or demand for lost revenues or profits associated with termination of this Agreement. Contractor shall not have the right to terminate this Agreement for convenience.

**9.2 Termination for Cause.** It is further understood and agreed by the Contractor and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Contractor violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Contractor for the purpose of setoff until such time as the exact amount due the Contractor from the Owner is determined.

**9.3 Termination shall not be construed as release.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

## **ARTICLE X ADDITIONAL REMEDIES**

**10.1 Additional Remedies.** If Contractor fails to meet the deadline for delivery of fuel as required by the Agreement, the Owner shall have all of the remedies available to a buyer pursuant to the UNIFORM COMERCIAL CODE including the right to purchase fuel from another vendor in substitution for the fuel due from Contractor and the right to recover the difference between the cost of substitute fuel over the cost Owner would have paid to Contractor for timely delivery. The cost of substitute fuel shall be determined by informal or formal procurement procedures as required by the Local Government Code.

## **ARTICLE XI GENERAL PROVISIONS**

**11.1 Contractor's Quality of Work.** The Owner's review of any documents prepared by the Contractor is only general in nature and its option to approve and accept the work in no way relieves the Contractor of responsibility for any specific deficiencies in its professional service.



Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

**11.4 Successors and Assigns.** This Agreement shall be binding on the Owner and the Contractor, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

**11.5 Venue.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

**11.6 Captions.** The captions of this Agreement are for information purposes only; and shall in no way affect the substantive terms or conditions of this Agreement.

**11.7 Severability.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

**11.8 Conflicting Provisions.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

**11.9 Amendments.** This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

**11.10 Entire Agreement.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral.

**11.11 Effective Date.** The Effective Date of this Agreement is the date signed by the City Manager for the City of El Paso.

(Signatures begin on following page)

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

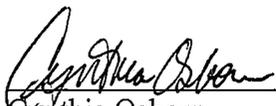
**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson,  
City Manager

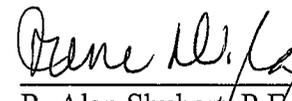
**CONTRACTOR:  
MANSFIELD GAS EQUIPMENT  
SYSTEMS CORPORATION**

\_\_\_\_\_  
By: J. Alexander  
Title: Vice President/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
City Engineer

**(Acknowledgements begin on following page)**

**ACKNOWLEDGEMENT**

**THE STATE OF TEXAS** §  
                                                          §  
**COUNTY OF EL PASO**           §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

**ACKNOWLEDGEMENT**

**THE STATE OF** \_\_\_\_\_ §  
                                                          §  
**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
by **J. Alexander**, as **Vice President/Treasurer** of **Mansfield Gas Equipment Systems Corporation**.

\_\_\_\_\_  
**Notary Public, State of Georgia**

**My commission expires:**

\_\_\_\_\_

# **LEASE**

**CITY OF EL PASO**  
**EL PASO, TEXAS**  
Lessor

**MANSFIELD**  
**GAS EQUIPMENT SYSTEMS CORPORATION**  
Lessee

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**Effective Date**

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**ATTACHMENTS**

**EXHIBIT "A" - Property Description**

# LEASE

THIS LEASE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the **City of El Paso**, a home rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "Lessor" and **Mansfield Gas Equipment Systems Corporation (MGES)**, a Georgia corporation and wholly owned subsidiary of Mansfield Energy Corporation, hereinafter referred to as "Lessee".

**WHEREAS**, Lessor owns the property located at 1059 Lafayette Drive, El Paso, Texas 79907 which houses the City's Municipal Service Center, commonly known as MSC; and

**WHEREAS**, Lessee proposes to lease from Lessor a portion of the property to avail itself of certain privileges, rights and uses pertaining thereto; and

**WHEREAS**, Lessee desires to construct certain facilities on the property for the conduct of permitted uses thereon; and

**WHEREAS**, Lessor has determined that a public purpose will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

## ARTICLE I PREMISES AND PRIVILEGES

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

9,100 square feet of a portion of Lot 1, Municipal Center Subdivision as recorded in Deed Book No. 2499308, Pg. 16, Instrument No. 49308, County Clerk, El Paso County, Texas, (municipally numbered and known as 1059 Lafayette Dr.) in the location more fully depicted in **Exhibit "A"** attached hereto and incorporated herein by reference, (the "Premises").

**1.02 Right of Ingress and Egress.** Lessor hereby grants to Lessee and its officers, employees, agents, servants, and business invitees the rights of ingress to and egress from the Premises over

and across the public roadways serving the Premises and the adjacent City-owned parcel as shown on **Exhibit "A"** for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnisher of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application.

**1.03 Right to Construct.** Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to the construction or any modifications to the Premises, the plans and specifications for any improvements, additions, alterations or changes shall be submitted to the City Engineer or designee, with a copy to the Director of the Mass Transit Department, for review and approval. No work shall commence until the City Engineer has given written approval.

**1.04 Restriction of Privileges, Uses and Rights.** The rights and privileges granted Lessee hereunder are subject and expressly limited to the design, development, construction, operation and maintenance of a natural gas fuel compressing station for the fueling of City owned vehicles. Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than a natural gas fuel compressing station shall constitute an event of default and may result in termination of the Lease. Lessee agrees that it shall complete the construction of the natural gas fuel compressing station and the station shall be fully operational by December 1, 2013.

**1.05 Conditions of Granting Lease.** The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. From time to time during the lease term, Lessor may find it necessary to make repairs to the improvements located on the site owned by Lessor. Every effort will be made to not interfere with Lessee's use and enjoyment of the site but Lessee understands and agrees that the use of the site will sometimes require the cooperation of Lessee and adjustments to Lessee's operations.
- D. Alcohol will not be served on the premises.
- E. The use of tobacco products/smoking is prohibited in the building.

- F. Other terms and conditions as applicable.

## ARTICLE II OBLIGATIONS OF LESSOR

**2.01 Quiet Enjoyment.** Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

## ARTICLE III OBLIGATIONS OF LESSEE

**3.01 Net Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II above and elsewhere in this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times; and
- B. Keep and maintain the landscaping for the Premises in a good state of repair at all times; and
- C. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- D. Pay any and all operational costs including all utilities and trash pickup; and
- E. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

**3.02 Condition of Premises.** Lessee may perform a site survey and environmental study of the premises within the first 90 days of the lease term and if the Lessee determines, based on the survey and/or study, that the premises is not suitable for its use, Lessee may terminate the lease without incurring any liability. Thereafter, Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any

representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**3.03 Annual Inspection.** At least once each calendar year during the term of this lease, Lessor shall conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements. Failure to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

**3.04 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal

government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy

at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

**3.05 Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Engineering and Construction Management Department, Lessee may be required to obtain the approval of other departments as well, such as Director of the Mass Transit Department.

**3.06 Landscaping and Maintenance of Improvements.** Lessee shall maintain the landscaping on the Premises and keep the improvements on the Premises in a good state of repair and condition. Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans if improvements are made to the current landscaping.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

**3.07 Utilities.** Lessee shall pay for all costs for utility services during the term hereof.

**3.08 Trash, Garbage, and Other Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

**3.09 Permitted Uses.** Lessee shall not enter into any activity on the Premises other than those permitted in Paragraph 1.03.

#### **ARTICLE IV TERM OF LEASEHOLD**

**4.01 Term.** This Lease shall be for a term of ten (10) years commencing on the Effective Date of the Lease. This ten (10) year term shall hereinafter be referred to as the "Initial Term".

**4.02 Option to Extend.** In the event Lessee is not in default of any terms of this Lease, Lessor shall have the option to extend this Lease for one (1) additional five (5) year term. Lessor, by and through the Director of the Mass Transit Department, may exercise the option

("Option Period") by notifying Lessee in writing of Lessor's election at least one hundred and twenty (120) days prior to the expiration of the previous term. In the event the election is so exercised, the Lease shall be extended for one (1) additional five (5) year term on the same terms and conditions.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**4.04 National Emergency.** In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of time of such suspension.

## **ARTICLE V CONSIDERATION**

**5.01 Rent.** As monetary consideration for this Lease, Lessee shall deliver to the City \$.50 cents per square foot per year for approximately 9,100 square feet for the initial ten-year term of this lease.

**5.02 Commencement of Rental.** Payment by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease.

**5.03 Adjustment of Lease Amount.** Lease rate for the Premises shall be adjusted every five years on the anniversary date of the lease based on the Consumer Price Index for all Urban Consumers (CPI-U) with a maximum total increase of 20%.

**5.04 Time of Payment.** All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease.

**5.05 Unpaid Rent, Fees and Charges.** Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth (20<sup>th</sup>) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

**5.06 Place of Payment.** All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901.

## **ARTICLE VI INSURANCE AND INDEMNIFICATION**

**6.01 Liability Insurance.** Prior to the execution of this Lease, Lessee shall obtain, provide proof of, and shall maintain for the term of this Lease, the types and amounts of insurance coverage listed below.

**Worker's compensation insurance** and disability benefits liability insurance required by Texas State law covering all of the employees of Lessee.

**Employer's liability insurance** required by Texas State law covering all the employees of Lessee.

**Commercial General Liability and Property Damage Insurance** with contractual liability and project completed operations coverage with combined single limit for bodily injury, and property damage with limits of not less than ten million dollars (\$10,000,000.00).

Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

**Commercial Automobile Liability Insurance** endorsed for any auto with limits of One Million Dollars (\$1,000,000.00) combined single limit.

**Excess liability insurance** above the required comprehensive general, automobile and employer's liability insurance in the amount of fifteen million dollars (\$15,000,000.00).

**All Risk Physical Damage Insurance** covering loss, damage, or destruction to the facility, (including machinery coverage and builder's risk insurance) in an amount equal to the full replacement value of the Facilities.

**Builder's Risk Insurance**, in an amount equal to the full replacement value of the facility, and

**Comprehensive Pollution Liability Insurance** in amounts as reasonably set from time to time by Owner, but not less than Three Million Dollars (\$3,000,000).

Said insurance shall be with a solvent insurance company authorized to do business in Texas and with an A.M. Best Rating of A-VII or better.

The City of El Paso shall be named as an Additional Insured on all insurance policies except Worker's Compensation Insurance Coverage, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

Builder's Risk shall apply only during the construction of the proposed CNG fuel processing facilities. All other insurance requirements apply both during the construction and the terms of each of the three separate property leases.

Commercial general liability and property damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager. The general liability coverage under all the leases shall be in the amount of ten million dollars (\$10,000,000.00) for all facilities combined.

**6.02 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selects be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

**6.03 Performance and Payment Bonds.** In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described herein.
- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

**6.04 Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance and/or the applicable endorsements shall be delivered to Lessor at least ten (10) days prior to the Effective Date of this Lease. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;

- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

**6.05 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.**

**6.06 Waiver of Liability.** Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

## ARTICLE VII

### DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms

and provisions of the Rules, Regulations and Land Use Requirements then in effect. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.

- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies including but not limited to other City departments for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to cause to be made, executed, and delivered to Lessor a payment bond and performance bond to insure the proper completion and payments required of any construction per this Article.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

**7.02 Insurance Proceeds.** Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the

insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.07 herein below, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

## ARTICLE VIII CONDEMNATION

**8.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.

- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**8.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

**8.03 Rights of Parties During Condemnation Proceeding.** Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

**8.04 Taking of Leasehold.** Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering

the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**8.05 Total Taking.** All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

**8.06 Partial Taking.** Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

**8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

**8.08 Taking of Temporary Use of Premises and Improvements.** Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

**ARTICLE IX  
ENCUMBRANCES**

**9.01 Encumbrance.** As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

**9.02 Mortgagee's Rights.** Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

**9.03 Rights on Foreclosure.** In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

**ARTICLE X  
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**10.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof.

**10.02 Cancellation.** Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;
- B. Fail to maintain insurance and provide proof of said insurance;
- C. Fail to use the Premises for the purpose identified in paragraph 1.03;
- D. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- E. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- F. Make any general assignment for the benefit of creditors;
- G. Abandon the Premises;
- H. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- J. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**10.03 Repossessing and Reletting.** In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**10.04 Assignment and Transfer.** Lessee may assign or transfer this Lease subject to the provisions of Section 1.04 and subject to the prior written approval of Lessor; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. §§101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

**10.05 Subleasing.** No Subleasing of the Premises is permitted.

**10.06 Termination for Convenience.** If Lessor terminates the Natural Gas Fuel Processing Facility Agreement with Lessee, it shall automatically, and without further notice, construe

termination of this Lease. If Lessor determines in its sole discretion that it is necessary or desirable that this Lease be terminated without regard to default by Lessee, then Lessor may so terminate this Lease for convenience. In any such termination for convenience, Lessor shall compensate Lessee for its reasonable damages arising from said termination. For purposes of this provision, such reasonable damages shall be exclusively defined as Lessee's unamortized cost of Lessee Infrastructure Improvements and Leasehold Improvements incurred after the Effective Date of this Lease. The cost shall be amortized on an annual straight line basis over the initial 10 year term of the Lease. Lessor shall have no obligation or liability to pay any claim or demand for lost revenues or profits associated with termination of this Lease. Lessee shall not have the right to terminate this Lease for convenience. This Section 10.06 shall survive termination of this Lease.

**10.07 Rights Upon Expiration.** Upon the expiration, termination or cessation of this Lease for any reason ("expiration"), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises unless otherwise agreed upon. In furtherance of the same, and within six (6) months prior to the expiration of this Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and Lessor and shall be in place until removal of all improvements.

The removal of all improvements, including the submittal of an environmental assessment and any required remediation of the Premises, as described below, shall be completed within one hundred eighty (180) days from the expiration of this Lease.

No later than thirty (30) days after the complete removal of improvements, Lessee, at its own cost and expense, shall submit to the Lessor a written copy of a current environmental site assessment of the Premises. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws or to return the Premises into a (like new) condition equal or better to that as of the Effective Date of the Lease.

Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

If Lessee fails to provide the environmental assessment and any required remediation of the Premises, Lessor may provide at Lessee's expense.

**10.08 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles

or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

**ARTICLE XI  
GENERAL PROVISIONS**

**11.01 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

**11.02 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR:       City of El Paso  
                  Financial Services  
                  2 Civic Center Plaza  
                  El Paso, Texas 79901

Copy to:       City of El Paso  
                  City Engineer  
                  2 Civic Center Plaza, 4<sup>th</sup> Floor  
                  El Paso, Texas 79901

Copy to:       City of El Paso  
                  Director, Mass Transit Department  
                  700-A San Francisco  
                  El Paso, Texas 79901

LESSEE: Mansfield Gas Equipment Systems  
Attn: J. Alexander, Vice President/Treasurer  
1025 Airport Parkway, SW  
Gainesville, GA 30501

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**11.03 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**11.04 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

**11.05 Nondiscrimination Covenant.** Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**11.06 Cumulative Rights and Remedies.** All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise,

the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**11.07 Interpretation.** Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**11.08 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**11.09 Paragraph Headings.** The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**11.10 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**11.11 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**11.12 Taxes and Other Charges.** The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

**11.13 Waiver of Warranty of Suitability.** Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended

commercial purpose nor that these essential facilities will remain in a suitable condition. Lessee leases the premises "as is", whether suitable or not, and waives the implied warranty of suitability.

**11.14 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.04 and 6.05.

**11.15 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**11.16 Authorization To Enter Lease.** If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**11.17 Independence of Lease.** It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting Lessee as the agent, representative or employee of Lessor for any purpose or in any manner whatsoever. Lessee is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

**11.18 Effective Date.** This Lease shall be effective as of the date signed by the City Manager for the City of El Paso.

**(Signatures begin on following page)**

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this \_\_\_ day  
of \_\_\_\_\_, 2012.

LESSOR:  
CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

LESSEE:  
MANSFIELD GAS EQUIPMENT  
SYSTEMS

\_\_\_\_\_  
By: J. Alexander  
Title: Vice President/Treasurer

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jane Tomchik  
Real Estate, City Development

\_\_\_\_\_  
Jay Banasiak, Director  
Mass Transit Department

**(Acknowledgments begin on following page)**

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**, Texas.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_    )  
                                  )  
COUNTY OF EL PASO \_\_\_\_\_ )

This instrument was acknowledged before me on this day \_\_\_\_ of \_\_\_\_\_, 2012,  
by **J. Alexander**, **Vice President/Treasure**, of **Mansfield Gas Equipment Systems**.

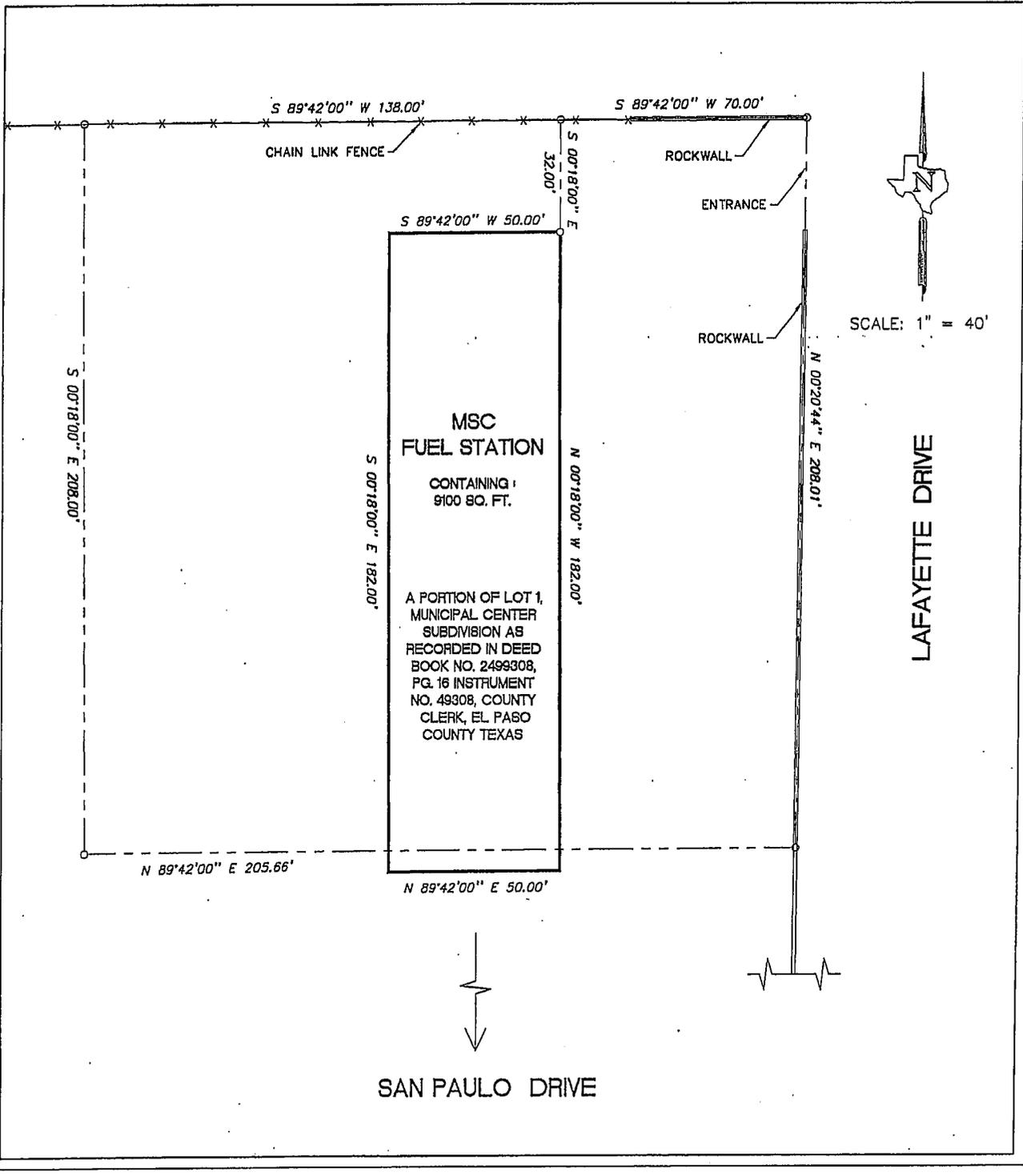
\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Printed Name: \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_



# CITY OF EL PASO ENGINEERING

## MSC FUEL STATION



METES AND BOUNDS DESCRIPTION

... (MSC Fuel Station) ...

Description of a parcel of land, being a portion of Lot 1, Municipal Center Subdivision, as recorded in Deed Book No. 2499308, Page 16, Instrument No.49308, County Clerk, El Paso County Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at the existing nail with shiner located at the centerline intersection of Lafayette Drive (50.00' Right-of-Way) and Gilbert Street (50.00' Right-of-Way); Thence leaving said intersection along the street centerline of Lafayette Drive N 00° 18' 00" E a distance of 113.45' to a point; Thence S 89° 42' 00" W a distance of 55.75' to a point located at the westerly line of a strip of land reserved for Right-of-Way purposes along Lafayette Drive; Thence S 89° 42' 00" W a distance of 70.00' to a point along an existing chain link fence; Thence S 00° 18' 00" E a distance of 32.00' to a point for the northeasterly corner of herein described parcel for the "TRUE POINT OF BEGINNING".

Thence S 00° 18' 00" E a distance of 182.00' to a point at the southeasterly corner of the herein described parcel;

Thence S 89° 42' 00" W a distance of 50.00' to a point at the southwesterly corner of the herein described parcel;

Thence N 00° 18' 00" W a distance of 182.00' to a point at the northwesterly corner of the herein described parcel;

Thence, N 89° 42' 00" E a distance of 50.00' to the "TRUE POINT OF BEGINNING" and containing 9,100 square feet or 0.2089 acres of land more or less.

Note: Bearing Basis is per plat of Mesa Vista No. 2 recorded in Volume 592, page 13, Deed records of El Paso County, Texas.

# LEASE

**CITY OF EL PASO**  
**EL PASO, TEXAS**  
Lessor

**MANSFIELD**  
**GAS EQUIPMENT SYSTEMS CORPORATION**  
Lessee

---

**Effective Date**

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**ATTACHMENTS**

**EXHIBIT "A" - Property Description**

**EXHIBIT "B" – Federal Transit Administration Federal Causes Federal Funding Requirements**

# LEASE

THIS LEASE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the **City of El Paso**, a home rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "Lessor" and **Mansfield Gas Equipment Systems Corporation (MGES)**, a Georgia corporation and wholly owned subsidiary of Mansfield Energy Corporation, hereinafter referred to as "Lessee".

**WHEREAS**, Lessor owns the property located at 5081 Fred Wilson Avenue, El Paso, Texas 79906, which houses the Living Independently Facilitated by Transportation offices, commonly known as the LIFT facility; and

**WHEREAS**, Lessee proposes to lease from Lessor a portion of the property to avail itself of certain privileges, rights and uses pertaining thereto; and

**WHEREAS**, Lessee desires to construct certain facilities on the property for the conduct of permitted uses thereon; and

**WHEREAS**, Lessor has determined that a public purpose will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

## ARTICLE I PREMISES AND PRIVILEGES

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

5,000 square feet of a portion of Section 17, Block 81, Township 2, T&P RR Co. Surveys, El Paso County, Texas (municipally numbered and known as 5081 Fred Wilson Avenue) as more fully depicted in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Premises").

**1.02 Right of Ingress and Egress.** Lessor hereby grants to Lessee and its officers, employees, agents, servants, and business invitees the rights of ingress to and egress from the Premises over and across the public roadways serving the Premises and the adjacent City-owned parcel as shown on **Exhibit "A"** for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnisher of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application.

**1.03 Right to Construct.** Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to the construction or any modifications to the Premises, the plans and specifications for any improvements, additions, alterations or changes shall be submitted to the City Engineer or designee, with a copy to the Director of the Mass Transit Department, for review and approval. No work shall commence until the City Engineer has given written approval.

**1.04 Restriction of Privileges, Uses and Rights.** The rights and privileges granted Lessee hereunder are subject and expressly limited to the design, development, construction, operation and maintenance of a natural gas fuel compressing station for the fueling of City owned vehicles. Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than a natural gas fuel compressing station shall constitute an event of default and may result in termination of the Lease. Lessee agrees that it shall complete the construction of the natural gas fuel compressing station and the station shall be fully operational by December 1, 2013.

**1.05 Conditions of Granting Lease.** The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. From time to time during the lease term, Lessor may find it necessary to make repairs to the improvements located on the site owned by Lessor. Every effort will be made to not interfere with Lessee's use and enjoyment of the site but Lessee understands and agrees that the use of the site will sometimes require the cooperation of Lessee and adjustments to Lessee's operations.
- D. Alcohol will not be served on the premises.

- E. The use of tobacco products/smoking is prohibited in the building.
- F. Other terms and conditions as applicable.

**ARTICLE II  
OBLIGATIONS OF LESSOR**

**2.01 Quiet Enjoyment.** Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

**ARTICLE III  
OBLIGATIONS OF LESSEE**

**3.01 Net Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II above and elsewhere in this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times; and
- B. Keep and maintain the landscaping for the Premises in a good state of repair at all times; and
- C. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- D. Pay any and all operational costs including all utilities and trash pickup; and
- E. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

**3.02 Condition of Premises.** Lessee may perform a site survey and environmental study of the premises within the first 90 days of the lease term and if the Lessee determines, based on the survey and/or study, that the premises is not suitable for its use, Lessee may terminate the lease without incurring any liability. Thereafter, Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with

all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**3.03 Annual Inspection.** At least once each calendar year during the term of this lease, Lessor shall conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements. Failure to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

**3.04 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws,

regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's

right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

**3.05 Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Engineering and Construction Management Department, Lessee may be required to obtain the approval of other departments as well, such as the Director of the Mass Transit Department.

**3.06 Landscaping and Maintenance of Improvements.** Lessee shall maintain the landscaping on the Premises and keep the improvements on the Premises in a good state of repair and condition. Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans if improvements are made to the current landscaping.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

**3.07 Utilities.** Lessee shall pay for all costs for utility services during the term hereof.

**3.08 Trash, Garbage, and Other Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

**3.09 Permitted Uses.** Lessee shall not enter into any activity on the Premises other than those permitted in Paragraph 1.03.

#### **ARTICLE IV TERM OF LEASEHOLD**

**4.01 Term.** This Lease shall be for a term of ten (10) years commencing on the Effective Date of the Lease. This ten (10) year term shall hereinafter be referred to as the "Initial Term".

**4.02 Option to Extend.** In the event Lessee is not in default of any terms of this Lease, Lessor shall have the option to extend this Lease for one (1) additional five (5) year term. Lessor, by and through the Director of the Mass Transit Department, may exercise the option

("Option Period") by notifying Lessee in writing of Lessor's election at least one hundred and twenty (120) days prior to the expiration of the previous term. In the event the election is so exercised, the Lease shall be extended for one (1) additional five (5) year term on the same terms and conditions.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**4.04 National Emergency.** In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of time of such suspension.

## ARTICLE V CONSIDERATION

**5.01 Rent.** As monetary consideration for this Lease, Lessee shall deliver to the City \$.50 cents per square foot per year for approximately 5,000 square feet for the initial ten-year term of this lease.

**5.02 Commencement of Rental.** Payment by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease.

**5.03 Adjustment of Lease Amount.** Lease rate for the Premises shall be adjusted every five years on the anniversary date of the lease based on the Consumer Price Index for all Urban Consumers (CPI-U) with a maximum total increase of 20%.

**5.04 Time of Payment.** All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease.

**5.05 Unpaid Rent, Fees and Charges.** Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth (20<sup>th</sup>) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

**5.06 Place of Payment.** All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901.

## ARTICLE VI INSURANCE AND INDEMNIFICATION

**6.01 Liability Insurance.** Prior to the execution of this Lease, Lessee shall obtain, provide proof of, and shall maintain for the term of this Lease, the types and amounts of insurance coverage listed below.

**Worker's compensation insurance** and disability benefits liability insurance required by Texas State law covering all of the employees of Lessee.

**Employer's liability insurance** required by Texas State law covering all the employees of Lessee.

**Commercial General Liability and Property Damage Insurance** with contractual liability and project completed operations coverage with combined single limit for bodily injury, and property damage with limits of not less than ten million dollars (\$10,000,000.00).

Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

**Commercial Automobile Liability Insurance** endorsed for any auto with limits of One Million Dollars (\$1,000,000.00) combined single limit.

**Excess liability insurance** above the required comprehensive general, automobile and employer's liability insurance in the amount of fifteen million dollars (\$15,000,000.00).

**All Risk Physical Damage Insurance** covering loss, damage, or destruction to the facility, (including machinery coverage and builder's risk insurance) in an amount equal to the full replacement value of the Facilities.

**Builder's Risk Insurance**, in an amount equal to the full replacement value of the facility, and

**Comprehensive Pollution Liability Insurance** in amounts as reasonably set from time to time by Owner, but not less than Three Million Dollars (\$3,000,000).

Said insurance shall be with a solvent insurance company authorized to do business in Texas and with an A.M. Best Rating of A-VII or better.

The City of El Paso shall be named as an Additional Insured on all insurance policies except Worker's Compensation Insurance Coverage, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

Builder's Risk shall apply only during the construction of the proposed CNG fuel processing facilities. All other insurance requirements apply both during the construction and the terms of each of the three separate property leases.

Commercial general liability and property damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager. The general liability coverage under all the leases shall be in the amount of ten million dollars (\$10,000,000.00) for all facilities combined.

**6.02 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selects be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

**6.03 Performance and Payment Bonds.** In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described herein.
- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

**6.04 Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance and/or the applicable endorsements shall be delivered to Lessor at least ten (10) days prior to the Effective Date of this Lease. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;

- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

**6.05 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.**

**6.06 Waiver of Liability.** Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

## ARTICLE VII

### DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms

and provisions of the Rules, Regulations and Land Use Requirements then in effect. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.

- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies including but not limited to other City departments for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to cause to be made, executed, and delivered to Lessor a payment bond and performance bond to insure the proper completion and payments required of any construction per this Article.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

**7.02 Insurance Proceeds.** Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the

insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.07 herein below, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

## ARTICLE VIII CONDEMNATION

**8.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.

- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**8.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

**8.03 Rights of Parties During Condemnation Proceeding.** Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

**8.04 Taking of Leasehold.** Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering

the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**8.05 Total Taking.** All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

**8.06 Partial Taking.** Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

**8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

**8.08 Taking of Temporary Use of Premises and Improvements.** Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

**ARTICLE IX  
ENCUMBRANCES**

**9.01 Encumbrance.** As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

**9.02 Mortgagee's Rights.** Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

**9.03 Rights on Foreclosure.** In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

**ARTICLE X**  
**EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**10.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof.

**10.02 Cancellation.** Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;
- B. Fail to maintain insurance and provide proof of said insurance;
- C. Fail to use the Premises for the purpose identified in paragraph 1.03;
- D. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- E. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- F. Make any general assignment for the benefit of creditors;
- G. Abandon the Premises;
- H. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- J. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**10.03 Repossessing and Reletting.** In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**10.04 Assignment and Transfer.** Lessee may assign or transfer this Lease subject to the provisions of Section 1.04 and subject to the prior written approval of Lessor; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

**10.05 Subleasing.** No Subleasing of the Premises is permitted.

**10.06 Termination for Convenience.** If Lessor terminates the Natural Gas Fuel Processing Facility Agreement with Lessee, it shall automatically, and without further notice, construe

termination of this Lease. If Lessor determines in its sole discretion that it is necessary or desirable that this Lease be terminated without regard to default by Lessee, then Lessor may so terminate this Lease for convenience. In any such termination for convenience, Lessor shall compensate Lessee for its reasonable damages arising from said termination. For purposes of this provision, such reasonable damages shall be exclusively defined as Lessee's unamortized cost of Lessee Infrastructure Improvements and Leasehold Improvements incurred after the Effective Date of this Lease. The cost shall be amortized on an annual straight line basis over the initial 10 year term of the Lease. Lessor shall have no obligation or liability to pay any claim or demand for lost revenues or profits associated with termination of this Lease. Lessee shall not have the right to terminate this Lease for convenience. This Section 10.06 shall survive termination of this Lease.

**10.07 Rights Upon Expiration.** Upon the expiration, termination or cessation of this Lease for any reason ("expiration"), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises unless otherwise agreed upon. In furtherance of the same, and within six (6) months prior to the expiration of this Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and Lessor and shall be in place until removal of all improvements.

The removal of all improvements, including the submittal of an environmental assessment and any required remediation of the Premises, as described below, shall be completed within one hundred eighty (180) days from the expiration of this Lease.

No later than thirty (30) days after the complete removal of improvements, Lessee, at its own cost and expense, shall submit to the Lessor a written copy of a current environmental site assessment of the Premises. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws or to return the Premises into a (like new) condition equal or better to that as of the Effective Date of the Lease.

Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

If Lessee fails to provide the environmental assessment and any required remediation of the Premises, Lessor may provide at Lessee's expense.

**10.08 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles

or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

## ARTICLE XI GENERAL PROVISIONS

**11.01 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

**11.02 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso  
Financial Services  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City of El Paso  
Director, Mass Transit Department  
700-A San Francisco St.  
El Paso, Texas 79901

Copy to: City of El Paso  
City Engineer  
2 Civic Center Plaza, 4<sup>th</sup> Floor  
El Paso, Texas 79901

LESSEE: Mansfield Gas Equipment Systems  
Attn: J. Alexander, Vice President/Treasurer  
1025 Airport Parkway, SW  
Gainesville, GA 30501

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**11.03 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**11.04 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

**11.05 Nondiscrimination Covenant.** Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**11.06 Federal Funding Requirements.** Since the proposed activity the subject of this Lease involves the incidental use of Federal Transit Administration (FTA) funded property, the Lessee shall also comply with the Federal Transit Administration Requirements for Incidental Use of

Federally Funded Facilities as set forth in **Exhibit "B"** and attached hereto and incorporated herein by reference.

**11.07 Cumulative Rights and Remedies.** All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**11.08 Interpretation.** Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**11.09 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**11.10 Paragraph Headings.** The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**11.11 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**11.12 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**11.13 Taxes and Other Charges.** The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

**11.14 Waiver of Warranty of Suitability.** Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose nor that these essential facilities will remain in a suitable condition. Lessee leases the premises "as is", whether suitable or not, and waives the implied warranty of suitability.

**11.15 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.04 and 6.05.

**11.16 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**11.17 Authorization To Enter Lease.** If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**11.18 Independence of Lease.** It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting Lessee as the agent, representative or employee of Lessor for any purpose or in any manner whatsoever. Lessee is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

**11.19 Effective Date.** This Lease shall be effective as of the date signed by the City Manager for the City of El Paso.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this \_\_\_ day of \_\_\_\_\_, 2012.

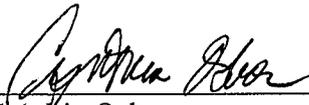
LESSOR:  
**CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

LESSEE:  
**MANSFIELD GAS EQUIPMENT  
SYSTEMS**

\_\_\_\_\_  
By: J. Alexander  
Title: Vice President/Treasurer

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jane Tomchik  
Real Estate, City Development

\_\_\_\_\_  
Jay Banasiak, Director  
Mass Transit Department

**(Acknowledgments begin on following page)**

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**, Texas.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_ )  
                                  )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this day \_\_\_\_ of \_\_\_\_\_, 2012,  
by **J. Alexander**, **Vice President/Treasurer**, of **Mansfield Gas Equipment Systems**.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Printed Name: \_\_\_\_\_

My Commission Expires:

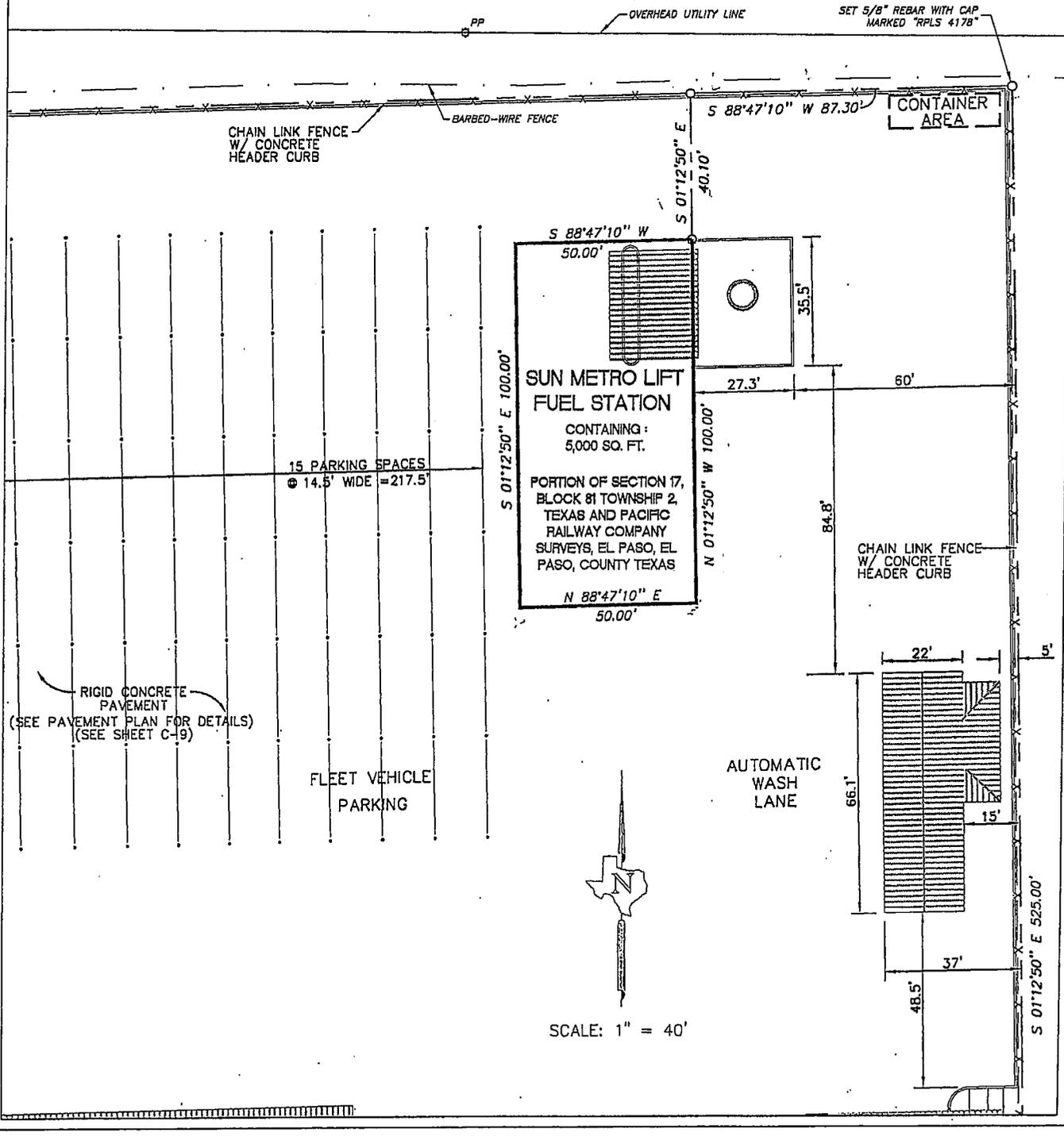
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# CITY OF EL PASO ENGINEERING

## SUN METRO LIFT FUEL STATION

BLOCK 81 TOWNSHIP 2 TEXAS & PACIFIC RAILWAY COMPANY SURVEYS



## METES AND BOUNDS DESCRIPTION

(Sun Metro Lift Fueling Facility)

Description of a portion of a parcel of land, being a portion of Section 17, Block 81, Township 2, T & P RR Co. Surveys, El Paso County, El Paso, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at the existing bolt in casing at the common corner of Sections 17, 18, 19, and 20; Thence, leaving said bolt in casing along the common line of sections 17 and 20, and original centerline of Fred Wilson Road, (Right-of-Way Width varies), S 88° 47' 10" W a distance of 508.45' to appoint; Thence leaving the common section line, N 01° 12' 50" W, a distance of 85'00" to a point set with a 5/8" rebar with cap and marked "RPLS 4178", said point being located at the northerly Right-of-Way line of Fred Wilson Road and the southeast corner of El Paso Sun Metro Lift, Operations and Maintenance Facility; Thence, leaving the northerly right-of-way line of Fred Wilson Road N 01° 12' 50" W a distance of 525' 00" to a point set with a 5/8" rebar with cap and marked "RPLS 4178"; Thence S 88° 47' 10" W, a distance of 87.30' to a point located along an existing chain link fence; Thence leaving said point S 01° 12' 50" E a distance of 40.10' to a point for the northeasterly corner of herein described parcel for the "TRUE POINT OF BEGINNING".

Thence S 01° 12' 50" E a distance of 100.00' to a point at the southeasterly corner of the herein described portion of the parcel;

Thence S 88° 47' 10" W a distance of 50.00' to a point at the southwesterly corner of the herein described portion of the parcel;

Thence N 01° 12' 50" W a distance of 100.00' to a point at the northwesterly corner of the herein described portion of the parcel;

Thence, N 88° 47' 10" E a distance of 50.00' to the "TRUE POINT OF BEGINNING" and containing 5,000 square feet or 0.1147 acres of land more or less.

Note: The section corner monuments used as control for survey are taken from a survey map of the area prepared by the Fort Bliss Department of Engineering; the bearings and distances noted are referenced on said map as being actual data.

**EXHIBIT B**  
**Federal Transit Administration Requirements for Incidental Use of Federally Funded Facilities**

**Prohibited Uses**

Lessee and its Sublessees shall not conduct operations in or on the Leased Premises in a manner that in the judgment of the Director of the Mass Transit Department:

- A. Adversely or materially interferes with the Lessor's exercise of satisfactory continuing control over the use of the premises to carry out the intended purpose of providing public transportation.
- B. Adversely or materially interferes with the Lessor's right to safely conduct operations on the premises for the intended purpose of providing public transportation.
- C. Adversely or materially interferes or would be likely to interfere with the reasonable use by others of common facilities at the Transfer Center;
- D. Hinders or would be likely to hinder police, firefighting or other emergency personnel in the discharge of their duties;
- E. Would or would be likely to constitute a hazardous condition at the Transfer Center;
- F. Would or would be likely to increase the premiums for insurance policies maintained by Lessor unless such operations are not otherwise prohibited hereunder and Lessee pays the increase in insurance premiums occasioned by such operations;
- G. Would involve any illegal purposes.

**Satisfactory Continuing Control**

Notwithstanding any other provisions of this Agreement, if at any time Lessor, in its sole discretion, requires all or any part of the Leased Premises hereunder for any Transfer Center purpose including, but not limited to, Transfer Center renovations, enlargements, or revisions, Lessor, upon ninety (90) days written notice to Lessee, shall terminate this Agreement with respect to those portions of the Leased Premises so required.

**Non-Discrimination**

Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee 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.
- B. That no person on the grounds of race, age, disability, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- C. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- D. That Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Right Act of 1964, and as said regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

### **Affirmative Action**

Lessee assures it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for, or otherwise applicable to persons leasing premises from Lessor of El Paso. Lessee assures that it will require that its covered suborganizations, including but not limited to Sublessees, provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations including but not limited to Sublessees, to the same effect.

## **Conflict of Interest**

No employee, officer, or agent of the Lessor shall participate in selection, or in the award or administration of an agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent.
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award.

The Lessor's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Lessee, potential contractors, or parties of subcontracts.

## **Debarred Bidders**

The Lessee, including any of its officers or holders of a controlling interest, is obligated to inform the Lessor whether or not it, or any of its subcontractors or agents, is or has been on any debarred bidders' list maintained by the United States government. Should the Lessee be included on such a list during the performance of this Project, it shall so inform the Lessor. The Lessee hereby certifies that it and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any of the covered transactions by any Federal Department or agency.

# **FUEL COMPRESSING STATION LEASE**

**El Paso International Airport  
El Paso, Texas**

**MANSFIELD GAS EQUIPMENT SYSTEMS CORPORATION**  
Lessee

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**Effective Date**

**FUEL COMPRESSING STATION LEASE  
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**ATTACHMENTS**

- EXHIBIT "A" -     Legal description of site to be leased**
- EXHIBIT "B" -     Description of adjacent City-owned parcel**

## FUEL COMPRESSING STATION LEASE

THIS FUEL COMPRESSING STATION LEASE ("Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of El Paso (the "Lessor") and **Mansfield Gas Equipment Systems Corporation**, a Georgia corporation and wholly owned subsidiary of Mansfield Energy Corporation (the "Lessee").

**WHEREAS**, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas (the "Airport") said Airport being managed by the Director of Aviation ("Director");

**WHEREAS**, Lessee proposes to lease from Lessor certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto;

**WHEREAS**, Lessor deems it advantageous to itself and to its operation of the Airport to lease unto Lessee the parcel of land described herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out;

**WHEREAS**, Lessee desires to construct certain facilities on the Airport for the conduct of permitted uses thereon, and

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep, maintain and improve said ground in accordance with standards established by Lessor if granted a lease of sufficient term on said ground area.

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

### ARTICLE I PREMISES AND PRIVILEGES

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

A portion of Lot 2, Block 2, Butterfield Trail Aviation Park, Unit Two, El Paso, El Paso County, Texas, consisting of 64,400 square feet of land or 1.478 acres, more or less, as more fully described on **Exhibit "A"** attached hereto and incorporated herein for all purposes, (the "Premises").

In addition, Lessee will be allowed limited use of the adjacent 34.036 acre City-owned parcel as shown on **Exhibit "B"**, which is attached hereto and made a part hereof for all purposes, to access the Premises. Lessee's access will be limited to the traffic control plan approved by Lessor and will be subject to such Section 1.02, Right of Ingress and Egress.

**1.02 Right of Ingress and Egress.** Lessor hereby grants to Lessee and its officers, employees, agents, servants, and business invitees the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport and the adjacent 34.036 acre City-owned parcel as shown on **Exhibit "B"** for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

**1.03 Right to Construct.** In addition to the general privileges, uses, rights, and interests attaching to the Premises hereinbefore described and without limiting the generality thereof, Lessee shall have the right to provide for the location, construction, erection, and as applicable, the removal of any Lessee-installed or owned improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out the activities provided for herein, subject, however, to the conditions herein set forth. Lessee agrees that it will begin construction and promptly complete construction of the fuel processing facility. Lessee agrees that it shall complete the construction of the Compressed Natural Gas fuel processing facility and the station shall be fully operational by Dec. 31, 2013. Lessor will provide the following identified the site preparation for the Premises prior to construction of the Lessee-owned improvements. Site preparation is defined as mobilization, rough grading and compaction, water service laterals, silt fencing and erosion control, and any other incidentals necessary for site preparation. Lessee will accept Premises subject to the terms and conditions of Section 3.02, Condition of Premises, of this Lease.

**1.04 Restrictions of Privileges, Uses and Rights.** Lessor hereby grants to Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive:

Lessee may use the Premises only for:

- A. the operation of fuel compressing and transfer facility for City-owned vehicles on the adjacent 34.036 acre City owned parcel as shown on **Exhibit "B"**.
- B. Alcohol will not be served on the premises.
- C. The use of tobacco products/smoking is prohibited in any enclosed structures, and
- D. other related uses, as approved by the Director of Aviation.

The use of the Premises as provided herein above shall be subject to compliance with all the

terms and conditions of this Lease. All uses of the Premises not specifically permitted herein are expressly prohibited.

**1.05 Conditions of Granting Lease.** The granting of this Lease and its acceptance by Lessee are conditioned upon the following covenants:

- A. That no functional alteration of the Premises shown on Exhibit "A" or change in the uses of such premises, except as reflected in Section 1.04 hereinabove, shall be made without the prior written consent of Lessor;
- B. That the right to use said public Airport facilities in common with others authorized to use such facilities shall be exercised subject to and in accordance with the laws of the United States of America and the State of Texas, and with all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law; and
- C. That Lessee will utilize only the public roadways, and other direction, path, route, or form of travel on the adjacent 34.036 acre City-owned parcel as shown on Exhibit "B" or which the Director may designate, from time to time, for Lessee's transportation or delivery of fuel to the Premises.

## ARTICLE II OBLIGATIONS OF LESSOR

**2.01 Operation as Public Airport.** Lessor covenants and agrees that during the term hereof, including any extensions thereto, it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act, as amended.

**2.02 Construction, Maintenance and Utilities.** Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

## ARTICLE III OBLIGATIONS OF LESSEE

**3.01 Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;
- B. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor in accordance with Section 3.12, of this Lease.

- C. Pay all casualty, bond, and liability insurance premiums required in accordance with this Lease; and
- D. Cover all ground area with concrete, asphalt or other comparable code compliant dust-free surfacing, and shall fence the area with fence material approved by the Director.

**3.02 Condition of Premises.** Lessee may perform a site survey and environmental study of the Premises within the first ninety (90) days of the lease term, and if Lessee determines, based on the survey and/or study, that the Premises is not suitable for its use, Lessee may terminate this Lease without incurring any liability. Thereafter, Lessee accepts the Premises in its present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "AS IS", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**3.03 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same

are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and gasoline, oil, jet fuel, lubricants and all other petroleum products.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Except for the specific uses allowed in accordance with this lease and all applicable laws, rules and regulations of the appropriate governmental agencies, Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the**

**Premises or any improvements thereon.** This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon results in any contamination of the Premises or any improvements thereon or any surrounding property, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or any surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all available information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section in any agreement by which it grants a right or privilege to any person, firm or corporation under this Lease.

C. Buffer Tanks and Fuel Transfer Lines.

- (1) Lessee acknowledges that the Premises presently contain no fuel storage tanks or fuel transport lines and that fuel storage tanks and fuel transport lines are not allowed or permitted. However, buffer storage tanks and fuel transfer lines will be permitted. Lessee, during the term of this Lease, will install, operate, and maintain a facility and equipment to compress natural gas, buffer tanks and fuel transfer lines on the Premises. Lessee will comply with all governmental regulations, laws, rules and ordinances, all industry standards and insurance requirement, all at Lessee's sole cost, expense and risk. In accordance with the terms and conditions of this Lease, Lessee shall remove all tanks, compressing equipment, and fuel transfer lines and will perform all necessary clean up, testing and backfilling necessary to assure that the Premises are not contaminated beyond the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality, or any successor agency's acceptable limits with any fuel, petroleum product or hazardous material. Lessee shall without limiting the generality of the foregoing, test the ground under the compressing equipment, the buffer tanks and the fuel transfer lines, once they are removed, and will deliver copies of the testing report showing no contamination beyond EPA and TCEQ acceptable limits on the Premises to Lessor. **Without limiting the generality of any other indemnity clauses contained in this Lease, Lessee agrees to indemnify and hold Lessor harmless against any and all cost, expense, and liability arising from the location, maintenance or operation of any fuel compressing facility and equipment, buffer tanks, and transfer lines on the Premises including, without limitation, any leaks therefrom or contamination of the Premises or adjacent property therefrom.**
- (2) Without limiting the foregoing, if Lessee, at any time during the term of this Lease, installs any compressing facility and equipment, buffer tanks,

and transfer lines on the Premises, Lessee warrants that it will file all appropriate forms with the appropriate regulatory agencies, to show that Lessee is the owner of the facility, equipment, tanks and lines and, as such, accepts responsibility for the facility, equipment, tanks, and lines.

Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises.

Lessee's failure or the failure of its agents, employees, contractors, invitees, or sublessees to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth herein, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

- D. Reporting. At any time that Lessee submits any filing pertaining to its property, operations, or presence at the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration (FAA), the Railroad Commission of Texas (RRC), the EPA or the TCEQ, Lessee shall provide duplicate copies of the filing(s) and all related documents to Lessor.

**3.04 Maintenance.** Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice. Lessee shall repair all damages to said Premises; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which, plus ten percent (10%) overhead, shall be borne by Lessee.

Lessee agrees not to paint, erect, or in any manner install any advertising on the exterior of the improvements or anywhere on the Premises, with the exception that Lessee may erect a sign displaying its name and business in accordance with Section 3.08 herein.

**3.05 Utilities.** Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate City of El Paso departments, and Lessee shall pay for any and all service charges incurred therefor.

**3.06 Trash, Garbage, and Other Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse caused as a result of the operation of its facility and activities. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, is not permitted.

**3.07 Permitted Uses.** Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Section 1.04.

**3.08 Signage.** The following regulations shall apply to all signs displayed for observation from outside any improvements on the Premises whether displayed on, near or within a building:

- A. Permitted Sign. Signs on Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The content, size, design and location of all signs shall require the written approval of the Director prior to installation. Said written approval shall be at Director's sole discretion. Outdoor advertising, billboards or flashing lighting are not permitted.
- B. Lighting and Construction. All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the FAA and its successor agencies. Lessee is solely responsible for obtaining all applicable permits and licenses.

**3.09 Approval of Plans.** Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Aviation Department is only one City department and that, in addition to obtaining approval of Director, Lessee shall be required to obtain approvals and permits as required by the El Paso City Code as amended. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one (1) complete set of the Final Plans (a hard copy and an electronic copy) as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits. Lessee shall also provide a copy of the executed Certificate of Occupancy for the Premises to Lessor.

**3.10 Authorization to Enter Restricted Area.** Lessee understands that all of its agents, employees, servants, subtenants, invitees or independent contractors must be authorized by the Lessor to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Lessee agrees that no person authorized to enter a restricted area by virtue of this Lease may permit any other person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

**3.11 Security.** Lessee is familiar with the restrictions imposed by 49 CFR 1540 as amended and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

**3.12 Penalties Assessed by Federal Agencies.** Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor or the Airport for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Lessee, its agents, employees or independent contractors, Lessee shall reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

**3.13 Taxes and Other Charges.** Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises. By March 1 of each year during the term of this Lease and at no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all such taxes and governmental charges for the previous calendar year have been paid in full.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

**3.14 Governmental Filings.** In the event that Lessee submits any filing or response pertaining to its property, operations or presence at the Airport with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the FAA, the EPA or the TCE or any successor agencies, Lessee shall provide duplicate copies to Lessor of such filing(s) or response(s) made at the time same are made.

#### **ARTICLE IV TERM OF LEASEHOLD**

**4.01 Term.** The Initial Term of this Lease shall be for a period of ten (10) years and commence on the Effective Date of this Lease. This ten (10) year term shall hereinafter be referred to as the "Initial Term".

**4.02 Extension of Term.** In the event that Lessee is not in default of any terms of this Lease and if the City extends the term of the contract awarded pursuant to RFP 2012-182R, Fuel Compressing Provider, Lessor shall have the option, exercisable in its sole and absolute

discretion, to extend the term of this Lease for one (1) additional term of five (5) years. To exercise the option, the Director of Aviation shall give written notice to Lessee of Lessor's intent no less than one hundred twenty (120) days prior to the expiration of the Initial Term of this Lease.

If Lessee is not willing to renew for the extension period, Lessee must provide written notice to the Director of Aviation within sixty (60) days from the notification of the Lessor's intent to exercise the option.

If the Option to Extend is exercised, per the Agreement, to extend the Lease at the end of the Initial Term, the Ground Rental will be adjusted in accordance with Article V, Section 5.03.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month, subject to the terms and conditions of this Lease, at a rental of one and one-half times the then-current monthly rental. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand, suit, or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

## **ARTICLE V FEES AND RENTALS**

**5.01 Ground Rental.** For the purpose of computing rental payments due, Lessor and Lessee agree that the Premises comprise 64,400 square feet of land. The annual Ground Rental for the Premises will be calculated on the basis of **\$0.40** per square foot per annum for the land. Therefore, the annual Ground Rental shall be **\$25,760.00** until the readjustment of the Ground Rental as identified in Section 5.03.

**5.02 Commencement of Rental.** Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the Effective Date of this Lease, which is first noted on the title page of this Lease.

**5.03 Readjustment of Ground Rental.** For the purpose of computing adjustments to rental payments, Lessor and Lessee agree as follows:

Ground Rentals shall be adjusted at the fifth (5<sup>th</sup>) anniversary of the date during the Initial Term when Lessee begins to provide compressed natural gas (CNG) to the City owned parcel as shown on **Exhibit B** ("Fueling Date") and at the commencement of the option

period exercised by Lessor. Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the Ground Rental readjustment for this anniversary date and at the commencement of the option period. The parties further agree that for the purposes of computing such percentage increase during the Initial Term, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Fueling Date of this Lease. Ground Rentals shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of readjustment (i.e. the fifth (5<sup>th</sup>) anniversary date of the Fueling Date). The Ground Rental readjustment shall be that amount equal to the percentage increase of the Consumer Price Index for all Urban Consumers from the Base Year CPI-U to that CPI-U in effect ninety (90) calendar days prior to the fifth anniversary of the Fueling Date or any option period exercised by Lessor.

All readjustments shall be effective as of the fifth (5<sup>th</sup>) anniversary date or commencement of option period, without regard to the date the actual adjustment is made; provided, however, that in no event shall the readjusted Ground Rental be less than the rate in place immediately prior to such readjustment nor more than twenty percent (20%) more than the rent established at the beginning of the immediately preceding five (5) year period.

**5.04 Time of Payment.** All rentals due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease

**5.05 Unpaid Rent, Fees and Charges.** Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the twentieth (20<sup>th</sup>) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law the from the date when the same was due according to the terms of this Lease and shall accrue until actually paid by Lessee.

**5.06 Place of Payment.** All payments required by Lessee herein shall be paid to Lessor at the following address:

Accounting Department  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79997-1278

**ARTICLE VI  
INSURANCE AND INDEMNIFICATION**

6.01 **Insurance.** Prior to the execution of this Agreement, Lessee shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below.

**Comprehensive General Liability Insurance** in amounts as reasonably set from time to time by Lessor, but not less than Ten Million Dollars (\$10,000,000.00) for bodily injury to one person for each occurrence,

Twenty Million Dollars (\$20,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

Ten Million Dollars (\$10,000,000.00) for Property Damage arising out of each occurrence,

**Commercial Automobile Liability Insurance** endorsed for any auto with limits of One Million Dollars (\$1,000,000.00) combined single limit,

**Excess liability insurance** above the required comprehensive general, automobile and employer's liability insurance in the amount of fifteen million dollars (\$15,000,000.00),

**All Risk Physical Damage Insurance** covering loss, damage, or destruction to the facility, including machinery coverage and

**Builder's Risk Insurance**, in an amount equal to the full replacement value of the facility, and

**Comprehensive Pollution Liability Insurance** in amounts as reasonably set from time to time by Lessor, but not less than Three Million Dollars (\$3,000,000).

Lessor shall be named as an Additional Insured on all insurance policies except Worker's Compensation Insurance Coverage, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the Lessor or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

In addition Lessee, at its sole cost and expense, shall throughout the term of this Agreement provide and keep in force Worker's Compensation Insurance and Disability Benefits Liability Insurance as required by Texas State law covering all of the employees of Lessee.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

Builder's Risk shall apply only during the construction or repair of the Compressed Natural Gas fuel processing facility.

**6.02 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

**6.03 Performance and Payment Bonds.** Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work.

- B. Prior to the date of commencement of construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

- C. In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance or Payment bond is in amount of excess of ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.
  
- D. In lieu of the payment and performance bonds described in paragraphs A, B, and C, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvements contemplated by the construction contract.

**6.04 Authorized Insurance Companies.** All such policies of insurance and payment bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies with an AMBest Rating of A-VII or better. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the Effective Date of this Lease. Each such insurance certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying Lessor is listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

**6.05 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or**

attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises and the adjacent 34.036 acre City-owned parcel as shown on Exhibit "B", its use of the Premises and the adjacent 34.036 acre City-owned parcel as shown on Exhibit "B", or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises and the adjacent 34.036 acre City-owned parcel as shown on Exhibit "B" including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

## ARTICLE VII DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.02 below, should the improvements upon the Premises be damaged or destroyed, in whole or in part, by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Rules, Regulations and Land Use Requirements then in effect. In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto.
  
- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies including but not limited to other City departments for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

- C. Prior to commencing construction, Lessor may require Lessee to cause to be made, executed, and delivered to Lessor a payment bond and performance bond to insure the proper completion and payments required of any construction per this Article.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

**7.02 Insurance Proceeds.** Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of this Lease or any option period of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Article X, Section 10.06 hereinbelow, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such termination. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition, except as provided in Section 11.14 of this Lease.

## **ARTICLE VIII CONDEMNATION**

**8.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute.

The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place on the Date of Taking.

- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both, that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.

- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**8.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

**8.03 Rights of Parties During Condemnation Proceeding.** Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

**8.04 Taking of Leasehold.** Upon a total taking, Lessee's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**8.05 Total Taking.** All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

**8.06 Partial Taking.** Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all

sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Lease.

**8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility so to repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect.

**8.08 Taking of Temporary Use of Premises and Improvements.** Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

## ARTICLE IX ENCUMBRANCES

**9.01 Encumbrance.** As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

**9.02 Mortgagee's Rights.** Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred twenty (120) days, to commence performance within such one -hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

**9.03 Rights on Foreclosure.** In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

## **ARTICLE X EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**10.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof.

**10.02 Cancellation.** Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;

- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings;
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver; or
- H. Be in default on the Natural Gas Fuel Processing Facility Agreement entered into concurrently with this Lease.

In any of the aforesaid events, which shall be events of default hereunder, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**10.03 Repossessing and Reletting.** In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts

received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**10.04 Assignment and Transfer.** Lessee may assign or transfer this Lease subject to the provisions of Section 1.04 and subject to the prior written approval of Lessor; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. §§101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

**10.05 Subleasing.** No Subleasing of the Premises is permitted.

**10.06 Termination for Convenience.** If Lessor terminates the Natural Gas Fuel Processing Facility Agreement (the "Agreement") with Lessee, it shall automatically, and without further notice, construe termination of this Lease. If any such termination of this Lease, Lessor shall have no obligation to compensate Lessee for any damages arising from said termination and Lessor shall have no obligation or liability to pay any claim or demand for lost revenues or profits associated with termination of this Lease. Damages, if any, to Lessee as a result of the termination for convenience of the Agreement shall be in accordance with the terms and conditions of the Agreement. Lessee shall not have the right to terminate this Lease for convenience. This Section 10.06 shall survive termination of this Agreement.

**10.07 Rights Upon Expiration.** Upon the expiration, termination or cessation of this Lease for any reason ("expiration"), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises unless otherwise agreed upon. In furtherance of the same, and within six (6) months prior to the expiration of this Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is mutually acceptable to Lessee and the Director and shall be in place until removal of all improvements.

The removal of all improvements, including the submittal of an environmental assessment and any required remediation of the Premises, as described below, shall be completed within one hundred eighty (180) days from the expiration of this Lease.

No later than thirty (30) days after the complete removal of improvements, Lessee, at its own cost and expense, shall submit to the Lessor a written copy of a current environmental site

assessment of the Premises. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws or to return the Premises into a condition reasonably equivalent to the condition of the Premises as of the Effective Date of the Lease, reasonable wear and tear excepted. Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises shall be subject to the rental due hereunder and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days.

If Lessee fails to provide the environmental assessment and any required remediation of the Premises, Lessor may provide at Lessee's expense.

**10.08 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of Rental or any other sum due from Lessee to Lessor under the terms of this Lease and if any mortgagee does not exercise its rights under this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for Rental due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any Rental due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

## ARTICLE XI GENERAL PROVISIONS

**11.01 Right of Flight.** Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface

of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

**11.02 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

**11.03 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

<b>LESSOR:</b>	City Clerk	and	Director of Aviation
	City of El Paso		El Paso International Airport
	2 Civic Center Plaza		6701 Convair Road
	El Paso, Texas 79901		El Paso, Texas 79925-1091

**LESSEE:** Mansfield Gas Equipment Systems Corporation  
1025 Airport Parkway, SW  
Gainesville, GA 30501  
Attn: J. Alexander, Vice President/Treasurer

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days' prior written notice to all other parties in the manner set forth in this Section.

**11.04 Attorney's Fees.** If Lessor brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, Lessor shall be entitled to recover reasonable attorney's fees.

**11.05 Lease Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El

Paso County, Texas.

**11.06 Nondiscrimination Covenant.** Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for the purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee 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 DOT, and as said Regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
  - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and
  - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the

Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**11.07 Affirmative Action.** Lessee assures that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the DOT by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assistance from their suborganizations (sublessees) to the same effect.

**11.08 Cumulative Rights and Remedies.** All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**11.9 Interpretation.** Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Lessee and Lessor agree that this Lease has been freely negotiated by both parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

**11.10 Lease Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**11.11 Paragraph Headings.** The Table of Contents and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**11.12 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**11.13 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the expiration or termination of this Lease

for the benefit of Lessor hereunder shall survive such expiration or termination of this Lease, including without limitation, the indemnification provisions of Sections 3.03 and 6.05.

**11.14 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**11.15 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with the all Environmental Law and the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**11.16 Subordination of Lease.** All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to Lessor. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises; Lessee may cancel this Lease in its entirety.

**11.17 Warranty of Suitability.** LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. LESSEE LEASES THE PREMISES "AS IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

**11.18 Authorization To Enter Lease.** If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, that each and every person

signing on behalf of Lessee is authorized to do so and that the Lease is fully binding upon Lessee in accordance with its terms. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

**11.19 Independence of Lease.** It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting Lessee as the agent, representative or employee of Lessor for any purpose or in any manner whatsoever. Lessee is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

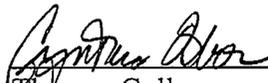
**11.20 Effective Date.** Regardless of the date signed, this Lease shall be effective as of the date first noted on the Title Page.

IN WITNESS WHEREOF, the parties have approved this Lease on the date first noted above.

**LESSOR: CITY OF EL PASO, TEXAS:**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

*for*   
\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Monica Lombraña, A.A.E.  
Director of Aviation

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
                                          )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2012, by **Joyce A. Wilson as City Manager of the City of El Paso, Texas ("Lessor")**.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_  
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ATTEST:

**LESSEE:  
MANSFIELD GAS EQUIPMENT  
SYSTEMS CORPORATION**

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012  
by J. Alexander, Vice President/Treasurer, of Mansfield Gas Equipment Systems Corporation  
(Lessee).

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_