

SECOND AMENDMENT TO
FUEL SYSTEM AGREEMENT FOR
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS AMENDMENT is made and entered into this ____ day of _____, 2024, by and between **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913 ("Authority"), as Lessor, and **RSW FUEL COMPANY LLC**, a Delaware limited liability company ("Lessee").

Background

Authority and Lessee are parties to a certain "Fuel System Agreement for Southwest Florida International Airport" dated November 14, 2011, and amended September 3, 2020 (herein the "Agreement"). The parties desire to further amend said Agreement by expanding the size of the Fuel Storage Area and extending the term of the lease, in order to facilitate Lessee's expansion of the existing Fuel System Improvements.

NOW THEREFORE, in consideration of the mutual promises herein, the undersigned parties hereby agree to amend the Agreement effective October 1, 2024, as follows:

1. Extension of Term.

Article 3 of the Agreement, (entitled "Term") is hereby amended such that the term of the Agreement will continue until 11:59 p.m. on September 30, 2054.

2. Expansion of the Premises.

Exhibit A depicting the "Fuel Storage Area" is hereby deleted and replaced the attached "Revised Exhibit A."

3. Increase in Fuel System Area Land Rent.

The “Fuel System Area Land Rent” identified in Section 6.3 (entitled “Fuel System Rent”) shall be increased to \$9,345.45 per month.

4. Definition Change.

The definition of “Air Carrier” in Article 1 is amended and restated as follows:

“**Air Carrier**” means any regularly scheduled “air carrier,” “foreign air carrier,” or “air cargo carrier” that is certified by the Federal Aviation Administration of the United States Department of Transportation and that is operating at the Airport and that is not an FBO.

5. Fuel System Additions or Extensions by Lessee.

Section 9.1 of the Agreement (entitled “Fuel System Additions or Extensions by Lessee”) is hereby deleted and replaced with the following:

Section 9.1 Fuel System Additions or Extensions by the Lessee. At the request of or with the approval of the Authority, Lessee shall have the right to construct and install additions or to make other modifications to the Fuel System (“Approved Additions”). Lessee shall be responsible at its sole cost and expense for all additions or other modifications made to the Fuel System unless otherwise agreed to in writing by Authority. If the Authority agrees to finance such Approved Additions and Lessee and Authority agree upon an annual or monthly payment amount, or on a formula for computing such amount, that will compensate Authority for financing the cost of construction of the Approved Additions over the period of time over which such amount shall be payable, Lessee shall be bound by such agreement and shall pay such additional charges in the manner provided in Article 6 above.

Lessee agrees that title to all Fuel System Improvements, including any Approved Additions to the Fuel System when made by Lessee, shall vest in, and belong to Authority free of all liens and claims, and without cost or charge to Authority unless otherwise agreed to in writing by the parties.

Lessee will not commence construction of any Approved Additions until after it:

- (1) Submits to the Authority for the Authority’s approval complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority’s “Leasehold Development Standards,”;

- (2) obtains and pays (or submits evidence acceptable to the Authority that it will obtain and pay) for all applicable permits and approvals required for any such work, and pays (or submits evidence acceptable to the Authority that it will pay) any applicable impact fees or other development fees;
- (3) requires its general contractor to obtain the following insurance and furnish evidence satisfactory to Authority that the contractor or contractors have such insurance, provided that insurance coverage required of individual subcontractors may be scaled to the scope of the work such contractor is under contract to perform as long as the general contractor meets the minimum limits indicated below;
- a. Commercial general liability insurance, including premises, operations, automobile, products-completed operations, and contractual liability, with minimum limits of \$2 million per occurrence and \$4million aggregate.
 - b. Workers' compensation insurance, in the amounts required by Florida law.
 - c. Inland Marine Builder's Risk Insurance, written on an all-risk, replacement cost, and completed value form basis, in an amount equal to at least 100% of the contract price of the work.
 - d. Contractor's Pollution Legal Liability Insurance, including Errors & Omissions, and providing complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties, for losses caused by pollution conditions that arise from the operations of the contractor, with limits of at least \$2,000,000 per occurrence, and \$4,000,000 annual aggregate, with an extended recovery period of at least two (2) years beyond the last day of the term of this lease, and including coverage for:
 - i. third-party claims for on and off-site bodily injury and property damage; and
 - ii. claims resulting in bodily injury property damage or cleanup costs;
 - e. Contractor's Professional Errors & Omissions Liability Insurance, with limits of at least \$1,000,000 per occurrence, and \$2,000,000 annual aggregate.

Authority must be named as additional insured in all insurance policies (except for workers compensation) and Lessee's contractors' insurance

policies will be primary and non-contributory and include a waiver of subrogation in favor of the Authority.

- (4) executes, delivers to the Authority, and records in the public records of Lee County, separate payment and performance bonds, which comply with the requirements of Florida Statutes section 255.05(1)(a) if and to the extent determined to be applicable by the Port Authority Attorney's Office, and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (5) obtains from Authority written approval, which approval shall not be unreasonably withheld, delayed, or conditioned, of the design plans and specifications and a written work permit authorization. The Authority reserves the right to require Lessee to resubmit designs and plans until acceptable to the Authority. The Authority may require architectural, landscaping, or other elements that exceed the minimum requirements of Lee County.

6. No Other Changes.

All other provisions of the Agreement remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have executed this amendment on the date first above written.

[signature page to follow]

(Lessee)

Print Name: Michael Hardesty

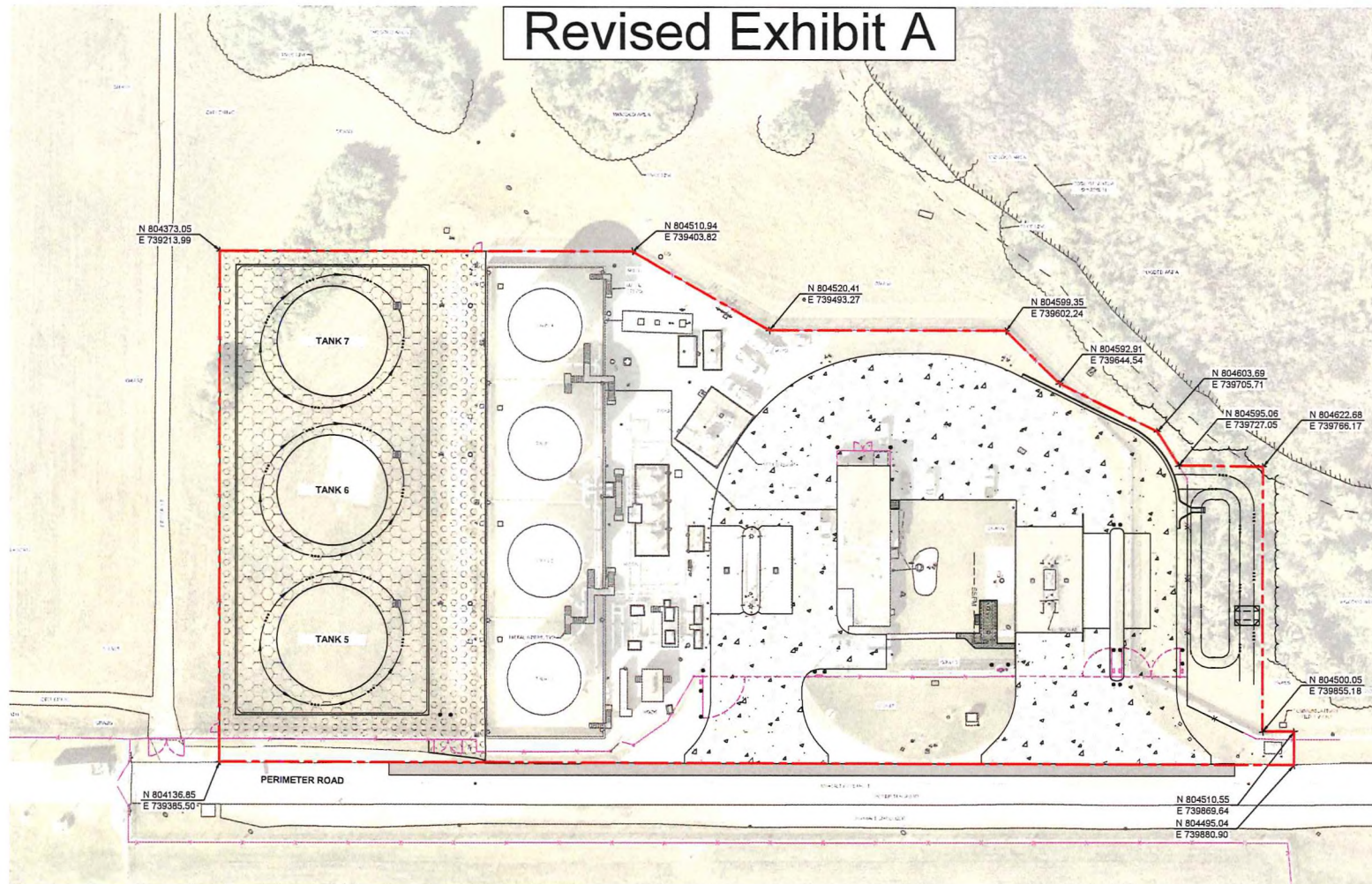
Date: 8/7/2024

Date: _____

By: _____
Port Authority Attorney

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Revised Exhibit A



Fuel Storage Area

SCALE: 1" = 30'
SCALE IN FEET



no.	date	by	chkd	description
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Southwest
Florida
International
Airport

date	detailed
designed	checked

RSW Fuel
COMPANY

07/10/2024

project	contract
drawing	rev.

file