

## **SUBLEASE**

THIS SUBLEASE (hereafter the "Sublease"), dated as of \_\_\_\_\_, 2010, is by and between SJC FUEL COMPANY LLC, a Delaware limited liability company, (hereinafter referred to as "Sublessor"), and WICKLAND PIPELINES LLC, a California limited liability company (hereinafter referred to as "Sublessee").

### **RECITALS**

A. Sublessor and Sublessee have entered into that certain "Pipeline Development and Operation Agreement" dated as of January 29, 2010 (the "Pipeline Agreement"), for the development, construction and operation by Sublessee of a public utility jet fuel transportation pipeline system (the "Pipeline") approximately two (2) miles long connecting the SFPP, L.P. petroleum products terminal located at 2150 Kruse Drive, San Jose, California to Sublessor's new jet fuel storage tank facility (the "Terminal") being constructed on Santa Clara County Assessor's Parcel No. 101-03-009, which parcel is owned by the City of San Jose with a street address of 2500 Seaboard Avenue, San Jose, California. A legal description of the property upon which the Terminal is located (the "Property") is attached hereto as Exhibit A.

B. Sublessor has entered into a "Ground Lease for Fuel System" with the City of San Jose ("City") dated May 2, 2006, as amended by that certain First Amendment to Ground Lease for Fuel System dated as of June 30, 2008 (as amended, the "Ground Lease"), governing Sublessor's use of the Property as the site of the Terminal.

C. Pursuant to the Pipeline Agreement, Sublessor has agreed to provide space on the Property via sublease upon which Sublessee will install and operate all the equipment necessary to connect the Pipeline to the Terminal, including but not limited to pipes, flanges, valves, a meter, filters, associated electronics and computers and foundations. This equipment shall constitute a portion of the Pipeline and shall hereafter be referred to as the "Connection Equipment".

### **AGREEMENTS**

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS TO THE PARTIES ACCRUING OR TO ACCRUE FROM THIS SUBLEASE AND THE PIPELINE AGREEMENT, SUBLESSOR DOES HEREBY SUBLEASE TO SUBLESSEE, AND SUBLESSEE DOES HEREBY SUBLEASE FROM SUBLESSOR THAT PORTION OF THE PROPERTY (HEREAFTER THE "PREMISES") DEPICTED ON EXHIBIT B, ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE. THIS SUBLEASE SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Sublessee shall use the Premises for the purpose of installing, maintaining, operating, repairing, and replacing the Connection Equipment as shown on the drawing attached hereto as Exhibit C and incorporated herein by reference. The Connection Equipment installed by Sublessee pursuant to this Sublease shall be situated as depicted on Exhibit C in order to transfer deliveries of jet fuel from the Pipeline to the Terminal. Sublessor shall provide Sublessee, and Sublessee's employee's, agents and contractors with reasonable ingress to and egress from the Premises, as well as suitable space located on the Property within which Sublessee may install supervisory, control and data acquisition ("SCADA") and communication equipment, which space shall be subject to Sublessee's approval (such approval not to be unreasonably withheld or delayed). Sublessor acknowledges and agrees that Sublessee's Connection Equipment will tie into and make use of the existing Terminal drainage and oily water separator/filtration systems, and will be within the coverage of the Terminal's system of firewater monitors. The design and construction of Sublessee's

System shall comply with all applicable laws, regulations and ordinances and all applicable terms and conditions of the Ground Lease. This Sublease shall be effective upon the date that this Sublease has been executed by all parties and approved by the City. The initial term of this Sublease shall run until the date twenty (20) years from the "System Start Date" (as such date is defined in the Pipeline Agreement). At the end of the initial term, the term of this Sublease shall be automatically extended for successive periods of one year; provided, however, that either party may terminate this Sublease at the end of the initial term or any one year extension, with or without cause, by giving at least one hundred eighty (180) days prior written notice to the other party. As soon as the System Start Date has occurred, the parties hereto shall confirm said date in writing.

Upon the termination of this Sublease, all rights herein granted shall revert to Sublessor, its successors and assigns, and Sublessee shall within thirty (30) days after termination execute and deliver a quitclaim of the Sublease in a form and substance reasonably satisfactory to Sublessor. Upon termination, Sublessee shall comply with all of the terms of Section 12 hereof. On the System Start Date, and on each annual anniversary of the System Start Date during the initial term or any extension of this Sublease, Sublessee shall pay annual rent to Sublessor in the amount of one hundred (100) U.S. dollars.

2. Sublessee shall own the Connection Equipment and, except as may be specifically provided otherwise in this Sublease, shall, at Sublessee's sole cost and expense, construct, control, operate, repair and maintain the Connection Equipment in good operating condition. All other improvements, equipment and personalty located on the Property shall be Sublessor's responsibility, and shall be constructed, controlled, operated, repaired and maintained in good working condition by Sublessor, at Sublessor's sole cost and expense.

3. Except as provided in this Sublease, in the construction, installation, maintenance, operation, repair, replacement or removal of the Connection Equipment, Sublessee shall not interfere with the rights of Sublessor in and to the use of any portion of the Property, including, but not limited to, the Premises and any pipelines or substructures. Sublessee, when engaged in such work as listed above, shall also have the right of reasonable ingress to and egress from the Premises over the roads or along the route designated therefore by Sublessor.

4. Construction and installation of the Connection Equipment, or any repair or replacement thereof, shall be done in a good and workmanlike manner, and horizontal underground portions of the Pipeline located on the Property, or any replacement thereof, shall be installed and maintained at a minimum of forty-two inches (42") of cover from top of pipe to surface of ground at all points and a minimum of 12 inches clearance between outside of pipe and the extremity of any other underground structure, unless prior written approval is obtained from Sublessor. Sublessee's construction, installation, maintenance, repair and operation of the Connection Equipment shall conform to all applicable federal, state and local regulations, including, but not limited to, the subscription to, and the notification of, Underground Service Alert prior to performing any excavation on the Property. Sublessee shall be responsible to ensure that the Pipeline is cathodically protected. Any portion of the surface of the Premises or the Property disturbed by Sublessee's exercise of the rights herein conveyed shall, to the extent practicable and reasonable, be restored to and kept in its former level condition, including the replacement of any landscaping or other improvements removed during construction. Sublessee shall exercise all due precaution and safety in exercising its rights under this Sublease. All maintenance, repair, replacement or removal of the Connection Equipment in the exercise of Sublessee's rights hereunder shall be done in a manner subject to Sublessor's approval, but in giving any such approval, Sublessor shall be acting on its own behalf and not as an agent of Sublessee. Any such approval by Sublessor shall not constitute a warranty of the methods or activity so approved or a release from liability for any injury, damage or other claims by Sublessor (or by any other entity) caused by Sublessee's activities, whether approved or not. Sublessor's approval shall not be unreasonably withheld and shall be given within a reasonable time of Sublessee's request given the nature of the circumstances.

5. Sublessor reserves the right to use the Premises for all purposes not inconsistent with this Sublease. Sublessee accepts the Premises subject to the Ground Lease and all exceptions to title to the Property that are of record in the Official Records of Santa Clara County, California on or before \_\_\_\_\_, 2010. Sublessee, at its sole risk and expense, shall do all things necessary to assure that the Connection Equipment will not be damaged by, and hereby waives all claims for damage to the Connection Equipment resulting from, electrolysis or similar action resulting from or connected with Sublessor's operation of any existing or future cathodic protection system on the Property.

6. Sublessee, in the exercise of the rights herein referred, shall not do or permit to be done any welding or operations involving sparks or flame on the Property, including the Premises, without the prior written consent of Sublessor, which consent shall not be reasonably withheld.

7. Sublessee shall in no event make any representation to any person that Sublessee, its agents or representative, is the principal or agent of Sublessor.

8. Sublessee shall observe all rules and regulations that have been or hereafter may be promulgated by Sublessor or the City for the safe conduct of individuals while on the Property, including, but not limited to, rules and regulations with respect to acts or practices deemed hazardous, and Sublessee agrees to enforce compliance therewith by its employees, agents and invitees.

9. Sublessee agrees to indemnify, defend with counsel reasonably acceptable to Sublessor, and hold Sublessor harmless from and against any action, liability, loss or expense caused by or resulting from any and all acts and omissions on the part of Sublessee, its employees, agents, or contractors, whether or not such acts or omissions are deemed to be in furtherance of the objects of this Sublease or are approved by Sublessor pursuant to Section 4. Sublessee's indemnity obligations shall include but shall not be limited to any acts or omissions on the part of Sublessee, its employees, agents, or contractors in violation of, or resulting in an event of default under, the Ground Lease. Further, Sublessee agrees to indemnify, defend with counsel reasonably acceptable to Sublessor, and hold Sublessor harmless from and against any and all claims, demands, losses, suits, actions, causes of action, liability and expense, including any liability to third parties and losses and damage to property suffered by Sublessor, directly or indirectly arising out of the release on or under the Property from the Connection Equipment, or by Sublessee or Sublessee's employees, representatives, agents or contractors, of any Hazardous Materials, as defined below, in violation of applicable law, including, without limitation, the cost of any required or necessary repair, clean-up or detoxification and the preparation of any closure of other required plans. "Hazardous Materials" shall include petroleum and petroleum products as well as all substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and those substances defined as "hazardous wastes," "hazardous substances" or "hazardous materials" in the California Health and Safety Code, and in any future amendments or additions to such laws, and in the regulations now or hereafter adopted and publications now or hereafter promulgated pursuant to said federal and California state laws. These indemnifications shall not apply to the extent of any negligence or willful misconduct by Sublessor.

10. Sublessee shall notify and sign in with Sublessor's Terminal operator prior to each entry into the Terminal by Sublessee's employees, contractors or agents of Sublessee. Sublessor must approve all contractors who perform work on the Property, provided such approval shall not be unreasonably withheld and shall be given within a reasonable time of Sublessee's request, given the nature of the circumstances.

11. Sublessee, at Sublessee's sole expense shall, throughout the duration of this Sublease (or for such longer periods as are specified in this Section 11), maintain or cause to be maintained insurance to cover claims arising out of or in connection with any work or other operations under this Sublease. This Section 11

identifies the minimum insurance requirements with which Sublessee shall comply; however, the minimum insurance requirements shall not relieve Sublessee of any other performance responsibilities under this Sublease (including the indemnity requirements), and Sublessee may carry, at its own expense, any additional insurance it deems necessary or prudent. Prior to the commencement of any work or other operations under the Sublease, the Sublessee shall furnish certificates of insurance and all endorsements affecting required coverage to Sublessor and City. Thereafter, Sublessee shall provided substitute certificates and endorsements no later than thirty (30) days prior to the expiration date of any insurance policy required by this Sublease.

A. Insurance coverage shall be at least as broad as:

(i). The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations and explosion, collapse and underground coverages, and coverage for economic loss; and

(ii). The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

(iii). Contractor's Pollution Liability with respect to initial construction of the Construction Equipment and, thereafter, site-specific Pollution Legal Liability, insurance applying to both sudden and gradual conditions for all operations, completed operations and professional services, and including coverage for on-site and off-site bodily injury, property damage, clean up and defense costs and economic loss; and

(iv). Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance; and

(v). Builder's Risk during construction/replacement of Facilities and, with respect to completed Facilities, Property, insurance providing "all risk" coverage for the Facilities.

B. Coverage limits shall be no less than:

(i) Commercial General Liability: the greater of either \$5,000,000 per occurrence and \$10,000,000 in the aggregate annually, or an amount of coverage consistent with the amount of financial responsibility required by the California State Fire Marshal in accordance with California Civil Code Section 3333.5(j).

(ii) Automobile Liability: \$5,000,000 per accident for bodily injury and property damage.

(iii) Pollution Liability: the greater of either (i) \$10,000,000 per occurrence and \$10,000,000 in the aggregate annually, or an amount of coverage consistent with the amount of financial responsibility required by the California State Fire Marshal in accordance with California Civil Code Section 3333.5(j).

(iv) Worker's Compensation: coverage as required by the State of California, and Employer's Liability of \$1,000,000 per accident.

(v) Builder's Risk and Property: Full replacement value.

C. Any deductibles or self-insured retentions must be declared to, and approved by, Sublessor and City. At the request of either City or Sublessor (the “Requesting Party”), the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Requesting Party, or the Sublessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Requesting Party.

D. The insurance policies shall be indorsed (or shall contain provisions) as follows:

(i) Commercial General Liability, Automobile Liability and Pollution Liability

a. Sublessor and City, and their respective officers, employees and agents are to be covered as additional insured as respects: Liability arising out of activities performed by or on behalf of, Sublessee; products and completed operations of Sublessee; premises owned, leased or used by Sublessee; and automobiles owned, leased, hired or borrowed by Sublessee. The scope of protection afforded to Sublessor, City and their respective officers, employees and agents as additional insureds shall extend to cover concurrent negligence.

b. Sublessee’s insurance coverage shall be primary insurance as respects Sublessor, City and their respective officers, employees and agents. Any insurance or self-insurance maintained by Sublessor, City and their respective officers, employees and agents shall be excess of Sublessee’s insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Sublessee shall not affect coverage provided Sublessor, City and their respective officers, employees and agents.

d. Coverage shall state that Sublessee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

e. Coverage shall contain waiver of subrogation in favor of Sublessor, City and their respective officers, employees and agents.

ii) Worker’s Compensation and Employer’s Liability; Builder’s Risk and Property. Coverage shall contain waiver of subrogation in favor of Sublessor, City and their respective officers, employees and agents.

(iii) All coverages. Each insurance policy required by this Sublease shall be endorsed to state that the coverage shall not be suspended, voided, cancelled, or reduced in limits or coverage except after thirty (30) days’ prior written notice has been given to Sublessor and City, except that ten (10) days’ prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Commercial General Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after the later to occur of expiration of the Sublease or completion of work or other operations under this Sublease. For any coverages written on a claims-made basis, the following requirements apply:

(i) The policy retroactive date must precede the effective date of this Sublease,  
and

(ii) If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Sublessee must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this Sublease.

F. All insurance companies providing coverage to Sublessee shall have an A.M. Best's rating of not less than "A-:VII".

G. Sublessee shall furnish Sublessor and City with certificates of insurance and with endorsements affecting the coverages required by this Sublease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Sublessee shall, at the request of Sublessor or City, provide complete copies of all required insurance policies to the requesting party. All policies, endorsements (including, without limitation, all endorsements required by this Section 11, and any endorsements reducing the scope of coverage provided by any insurance policy) and certificates (including, without limitation, those evidencing coverage for third parties as are specified in Section 11(H), below) shall be subject to the review and approval of Sublessor and City as to form and content; provided, however, that failure to do so shall not operate as a waiver of these insurance requirements. Proof of insurance shall be mailed to Sublessor as specified in Section 19 of this Sublease. Proof of insurance shall be mailed to City at the following address (or any subsequent email or postal address as may be directed in writing by the City's Risk Manager)

City of San Jose – Human Resources  
Risk Management  
200 East Santa Clara St., 2<sup>nd</sup> Floor – Wing  
San Jose, CA 95113-1905

City, as lessor under the Ground Lease and acting through its Risk Manager, shall be entitled to review these insurance requirements from time to time during the term of this Sublease and make reasonable adjustments thereto when necessary and prudent based upon (by way of example only) changes in law, principles of sound risk management practice, or inflation. Sublessee shall comply with each such adjustment within thirty (30) days of receiving a written request that the adjustment be initiated. Adjustments made by City shall be binding on Sublessor.

H. Sublessee shall include all contractors and other parties with whom it is contracting (whether directly or indirectly) in connection with work or other operations under this Sublease ("Third Parties") as insured under its policies or shall obtain separate certificates and endorsements for each such Third Party evidencing their compliance with these insurance requirements, including without limitation additional insureds coverage and waivers of subrogation. Notwithstanding the generality of the foregoing, City, as lessor under the Ground Lease and acting through City's Risk Manager, may from time to time approve amendments to these requirements as they apply to Third Parties (such as, by way of example only, reduction of limits), provided the Sublessee has requested such amendment in writing and that such amendment is acceptable based upon principles of sound risk management practice. Any such amendment made by City shall be binding on Sublessor.

12. Subject to the terms of this Sublease, Sublessee shall retain exclusive title to, interest in and control of the Connection Equipment, which will remain the personal property of Sublessee and shall not become fixtures on the Property. Upon the termination of this Sublease, Sublessee shall thereupon, at its own expense and risk, remove all pipes and any other property placed by Sublessee upon the Premises or the Property, and restore the Premises and the Property as nearly as reasonably practicable to the same state and condition they were in prior to the construction of the Connection Equipment, unless Sublessee seeks and obtains written approval from Sublessor to allow all or a portion of the Connection Equipment to remain in

place. If this approval is not obtained, and if Sublessee should fail to remove the Connection Equipment and restore the Premises and the Property to its pre-Sublease condition within sixty (60) days after such termination, Sublessor may so do, at the risk of Sublessee, and all cost and expenses of such removal and the restoration of the Premises and Terminal Property as aforesaid, together with interest thereon at the rate of ten percent (10%) per annum, shall be paid by Sublessee upon demand.

13. As-built drawings of the Connection Equipment shall be furnished by Sublessee to Sublessor within 90 days of completion of the project. Sublessee shall provide all such additional information reasonably requested by Sublessor or the City or required by the Ground Lease.

14. Sublessee shall pay, before the same becomes delinquent, all charges, property and other taxes, rates and assessments upon or against the Connection Equipment and any other property or improvements placed by Sublessee upon or in the Premises or the Property. Sublessor shall, at Sublessor's sole cost and expense, provide Sublessee with all electrical power required to operate the Connection Equipment.

15. No delay or failure of performance by Sublessor or Sublessee, or their respective agents, contractors, officers, directors, or employees shall constitute a default hereunder or give rise to any claims for damages if and to the extent that said delay or failure of performance is caused by "Force Majeure", which, as used herein, shall include: any act, delay, or failure to act on the part of any governmental authority, including delay or failure to act in the issuance of permits or licenses; delay or failure to obtain any rights-of-way, subleases, or other interests in lands necessary for the location of the Pipeline, the Connection Equipment or any facilities related thereto; acts of God, including inclement weather, rendering imprudent the commencement or continuation of work; accidents or disruptions such as fire, explosion, earthquakes, or major equipment breakdown; failure or delay beyond the reasonable control of the party claiming Force Majeure in securing necessary materials, equipment, labor, services, or facilities; present or future laws, orders, regulations, directives, or policies enacted, adopted, instituted, or sponsored by any government or governmental corporation, agency, bureau, or commission that delay, restrict, or prevent performance hereunder; labor difficulties, including strikes, lockouts, or slowdowns; delay or failure of transportation, including shortage of transportation facilities or equipment; and any other cause beyond the reasonable control of the party claiming Force Majeure restricting or preventing performance hereunder, whether or not like or similar to the causes or occurrences specifically enumerated above. In the event of any such delay in performance by the party claiming Force Majeure, said party shall notify the other party as soon as practicable of such occurrences relied upon, and shall use reasonable diligence in remedying the causes set forth above. However, settlement of strikes, lockouts, or other labor difficulties shall be wholly within the discretion of the party claiming Force Majeure.

16. If at any time Sublessee fails to make a payment of rent or any other monetary sum called for by this Sublease, or if Sublessee fails at any time to keep or perform any of its other covenants or agreements in this Sublease, Sublessee shall not be in breach or default under this Sublease unless and until Sublessor has delivered written notice to Sublessee specifying the particulars of such failure or breach. Subject to any Lender's cure rights as provided in Section 17 below, if Sublessee fails to remedy any default on its part hereunder within thirty (30) days after receipt of such written notice from Sublessor (unless cure of such failure is not possible within such 30-day period, and Sublessee commences to cure such failure within such 30-day period and diligently and in good faith continues to pursue the completion of such cure after such 30-day period), Sublessor, in addition to other available remedies, shall have the right to terminate this Sublease.

17. Sublessee may, without Sublessor's consent, mortgage, pledge, encumber, assign or otherwise hypothecate for security purposes Sublessee's Subleasehold estate and Sublessee's interest in this Sublease. Sublessee may also freely assign this Sublease to an affiliate of Sublessee. All other assignments by Sublessee shall be subject to the prior written consent of Sublessor, which consent shall not be unreasonably withheld.

Sublessee shall provide notice thereof to Sublessor promptly following any assignment. Sublessor understands that Sublessee may borrow funds to provide for the development, construction and operation of the Pipeline and other business purposes. Sublessor understands that it may be necessary for Sublessee to provide to its lender a right for that lender, should Sublessee default or be unable to make the payments under that loan, to take the position of Sublessee under the terms of this Sublease. Sublessor understands and agrees to that security mechanism. Sublessee may, without Sublessor's consent, encumber the Sublessee's Subleasehold interest in the Premises, Sublessees' interest in this Sublease, and Sublessee's interest in the Connection Equipment located on the Premises, with a Subleasehold mortgage, Subleasehold deed of trust, collateral assignment of Sublease, security agreement or other security interest (each a "Subleasehold Security Document") securing a loan or loans obtained by Sublessee. Provided that Sublessee has provided written notice to Sublessor of the address of any "Lender" as defined herein for such Lender's receipt of notices under this Sublease, Sublessor shall provide to each holder of a Subleasehold Security Document (a "Lender"), simultaneous with notice to Sublessee, notices of default by Sublessee under this Sublease. Sublessor agrees that such notice of breach ("Breach Notice") to Sublessee shall not be effective unless and until a copy of such notice has been given to Lender as provided in this Sublease. All rights of Sublessor to terminate this Sublease, repossess the Premises or exercise any remedy against Sublessee are subject to and conditioned upon Sublessor's providing to Lender notice and opportunity to cure as set forth in this Section. If the breach of the Sublease described in the Breach Notice is not cured by Sublessee within the time prescribed by Section 16 of this Sublease, Lender shall have an additional sixty (60) days (after the end of Sublessee's cure period) to cure such breach or, if the nature of the breach is such that it cannot be cured within sixty (60) days, Lender shall have such additional period as may be reasonably required to cure such breach, provided that Lender has commenced the cure within the sixty (60) day period and diligently pursues such cure to completion. Upon a foreclosure or deed in lieu of foreclosure of the Subleasehold Security Document, Sublessor shall recognize Lender, or any other foreclosure sale purchaser, or any grantee of a deed in lieu of such foreclosure (a "Successor"), as the Sublessee under this Sublease. If a Successor acquires the Sublessee's interest under this Sublease, then the Successor shall be liable only for the Sublessee's obligations that accrue under this Sublease for the period of time that the Successor is the Sublessee hereunder and in possession of the Premises. While any such financing is in place, Sublessor and Sublessee shall not terminate the Sublease or surrender the Premises or Sublease to Sublessor without the written consent of the Lender. If Sublessee seeks to obtain such financing, Sublessor agrees to enter into an addendum or amendment to this Sublease to the extent reasonably requested by Sublessee's proposed lender to address and document further provisions relating to such financing, provided that such proposed amendment does not materially and adversely affect the rights of Sublessor or its interest in the Premises.

18. Except as otherwise provided and set forth in the "Consent of City of San Jose" included in this Sublease, this Sublease shall be subject to all of the terms and conditions of the Ground Lease. Sublessor and Sublessee hereby acknowledge and agree, that in the event of any conflict between the Ground Lease and this Sublease, as between Sublessor and Sublessee the terms of this Sublease shall prevail. Sublessor and Sublessee further acknowledge and agree that this Sublease contains the entire agreement between Sublessor and Sublessee pertaining to the Premises, and that neither Sublessor nor Sublessee shall have any obligations to the other to comply with any other agreement relating to the Premises, including without limitation, the Ground Lease.

19. All notices given under this Sublease shall be in writing. Notice is considered given two (2) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Notices to Sublessor shall be sent to:

SJC Fuel Company LLC  
Attention: Mr. Jeff Greeson, Fuel Committee Chairperson  
c/o Southwest Airlines Co.  
2702 Love Field Drive –HDG-7FM  
Dallas, TX 75235-1611

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With a copy to:  
Karen L. Chapman, Esq.  
Sherman & Howard L.L.C.  
633 Seventeenth Street, Suite 3000  
Denver, Colorado 80202

Notices to Sublessee shall be sent to:

Wickland Pipelines LLC  
Attn: Roy Wickland, Manager  
8950 Cal Center Dr.  
Suite #125  
Sacramento, CA 95826

20. The terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

21. If any term or provision of this Sublease is determined to be illegal, unenforceable or invalid, in whole or in part for any reason, such illegal, unenforceable or invalid provision or part thereof shall be stricken from this Sublease and such provision shall not affect the legality, enforceability or validity of the remainder of this Sublease. If any provision or part thereof of this Sublease is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

22. Each party hereto shall, without charge, at any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of the requesting party's interest in this Sublease or the Terminal), within ten (10) days after written request of the requesting party, certify by written instrument duly executed and acknowledged to any party specified in such request: (a) as to whether this Sublease has been supplemented or amended and, if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Sublease, in accordance with its tenor; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses hereto on the part of the certifying party; (e) as to the commencement and expiration dates of the term of the Sublease; and (f) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by the requesting party and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party giving the certificate.

23. This Sublease constitutes the entire agreement between Sublessor and Sublessee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Sublease shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Sublease shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

24. This Sublease shall be governed by and construed in accordance with the laws of the State of California. The venue for any action or proceeding arising out of, or related to, this Sublease shall be in Santa Clara County, California.

25. Any dispute, claim, or controversy arising out of or relating to this Sublease or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before a sole arbitrator, to be administered by JAMS (formerly Judicial Arbitration and Mediation Services, Inc.) pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

26. The parties to this Sublease agree that this Sublease is the product of joint authorship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Sublease waives the effect of such statute.

27. Each party hereto shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional documents as the other party hereto may, at any time, reasonably require for the purpose of carrying out this Sublease. Concurrently with the signing of this Sublease, a memorandum of this Sublease, including descriptions of the Property and the Premises, shall be executed by the parties, notarized in accordance with California law, and recorded in the Official Records of Santa Clara County.

28. This Sublease may be executed in counterparts, each of which shall be deemed an original as against the party signing such counterpart, but which together shall constitute one and the same instrument.

29. This Sublease is contingent upon Sublessee obtaining all permits, other regulatory entitlements and rights-of-way upon terms and conditions acceptable to Sublessee, in Sublessee's sole discretion, required for the construction and operation of the Pipeline. In the event said permits, entitlements and rights-of-way have not been obtained and construction of the Pipeline completed by December 31, 2010, Sublessee or Sublessor may cancel this Sublease, in which case all obligations of the parties as set forth herein shall terminate and be of no further force or effect.

IN WITNESS WHEREOF, this Sublease has been executed by the parties thereto and is effective as of the date first written above.

**SUBLESSEE:**

**WICKLAND PIPELINES LLC,**  
a California limited liability company

By: \_\_\_\_\_

**SUBLESSOR:**

**SJC FUEL COMPANY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

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

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

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

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

**CONSENT OF CITY OF SAN JOSE**

In consideration of the fact that Sublessee is developing the Pipeline to provide improved jet fuel transportation to the San Jose International Airport (the "Airport"), and that said Pipeline will materially improve Airport operations, City, as the owner of the Premises and the Property, as well as the lessor under the Ground Lease, hereby approves and consents to this Sublease and all of its terms and conditions, and further acknowledges and agrees that, as between Sublessor and Sublessee, the terms of this Sublease shall prevail over any conflicting or inconsistent provisions contained in the Ground Lease.

City additionally specifically acknowledges and agrees that the provisions of Articles 3.4, 6, 8, 14.7, 20 and 26.1 of the Ground Lease shall not apply to, or be considered included in, this Sublease. City further agrees that in the event the Ground Lease is terminated for any reason, prior to the expiration of the term of this Sublease, this Sublease shall not be terminated or extinguished, nor shall the right to use and possession of the Premises by Sublessee under the terms of this Sublease be disturbed. Effective as of said termination, City shall succeed to Sublessor's interest in this Sublease and recognize this Sublease as a direct lease between City and Sublessee, and Sublessee shall attorn to City and recognize City as Sublessor under this Sublease, in which event such recognition and attornment shall be effective and self-operative without the need to execute any further documents. The provisions set forth in this Consent of the City of San Jose shall survive the termination of the Ground Lease. City shall assume the obligations of Sublessor under the Sublease effective as of the termination of the Ground Lease, but shall not be:

(a) liable for any act or omission of Sublessor under the Ground Lease or for any default of Sublessor under this Sublease which occurred prior to the termination of the Ground Lease;

(b) subject to any defenses or offsets, or claims for damages, that Sublessee may have against Sublessor which arose prior to the termination of the Ground Lease;

(c) required to credit Sublessee with any rent or other amounts paid by Sublessee to Sublessor; or

(c) bound by any changes or modifications made to this Sublease without the written consent of City.

In the event that City succeeds to Sublessor's interest in this Sublease, City may require Sublessee to make complete written attornment to City, as Sublessor's successor, to establish direct privity of contract between City and Sublessee with the same force and effect as though this Sublease was originally made directly between City and Sublessee.

IN WITNESS WHEREOF, this consent has been executed by City on the date indicated below, and is effective as of that date.

The City of San Jose

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

**Exhibits:**

A – Description of Terminal Property

B – Description of Premises

C – Drawing of Sublessee's System

**DESCRIPTION OF TERMINAL PROPERTY**

The real property referred to in this Sublease as the “Property” is located in the City of San Jose, County of Santa Clara, State of California, and legally described as follows:

**[to be filled in before this Sublease is signed]**

**DEPICTION OF PREMISES**

**[to be attached before this Sublease is signed]**

**DRAWING OF CONNECTION EQUIPMENT**

[to be attached before this Sublease is signed]