

RESOLUTION NO. 10701

A RESOLUTION APPROVING A FUEL TANK AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND SAM BROWN AND TRAVELAIRE SERVICES, INC., AND AUTHORIZING THE PRESIDENT OF CITY COUNCIL TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Fuel Tank Agreement, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, by and between the City of Pueblo, a Municipal Corporation, and Sam Brown and Travelaire Services, Inc., is hereby approved, subject to the conditions as set forth in said Lease Agreement.

SECTION 2.

The President of City Council is hereby authorized to execute said Agreement on behalf of the City of Pueblo, a Municipal Corporation, and the City Clerk shall affix the Seal of the City thereto and attest the same.

INTRODUCED: April 24, 2006

BY: Gilbert Ortiz
COUNCILPERSON

APPROVED: Judy P. Weaver
VICE PRESIDENT OF CITY COUNCIL

ATTESTED BY: [Signature]
CITY CLERK

FUEL TANK AGREEMENT

THIS FUEL TANK AGREEMENT ("Agreement") is made and entered into as of May 1, 2006 between the City of Pueblo, a municipal corporation ("Lessor") and Sam Brown, individually, and Travelaire Services, Inc., a Colorado corporation (collectively, the "Lessee"), WITNESSETH:

WHEREAS, Lessor and Lessee entered into a Hangar ground Lease dated September 8, 2003 (the "Lease") for land located at the Pueblo Memorial Airport ("Airport"), and

WHEREAS, Lessee desires to use Jet-A Tank No. 1 ("Fuel Tank") located within Lessor's fuel farm located at the Airport ("Fuel Farm") in conjunction with its business conducted under the Lease, and

WHEREAS, City is willing to allow Lessee to use the Fuel Tank. NOW, THEREFORE,

In consideration of the foregoing and mutual promises contained herein, Lessor and Lessee agree as follows:

1. Fuel Tank Use. Lessor leases to Lessee and Lessee hereby leases from Lessor the Fuel Tank for the exclusive purpose of storing aviation fuel to be dispensed to Lessee's owned or leased aircraft using the Airport in conjunction with Lessee's business conducted under the Lease, subject to and upon the terms and conditions herein set forth.

2. Term. The term of this Agreement shall begin May 1, 2006 ("Commencement Date") and end August 31, 2023 unless sooner terminated as herein provided. The Term of this Agreement shall terminate upon the date of termination of the Lease. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated at any time for any reason, without liability, by either Lessor or Lessee upon ninety (90) days prior written notice given to the other party specifying the date of termination.

3. Fuel Flowage Fee. For the use of the Fuel Tank, Lessee shall pay to City a monthly fuel flowage fee in the manner and amount as provided in Section 3.B. of the Lease for each gallon of aviation fuel delivered or caused to be delivered by Lessee to the Fuel Tank. For such purpose, Section 3.B. of the Lease is incorporated herein as if set out herein in full. All unpaid fuel flowage fees shall accrue interest at the rate of ten (10) percent per annum.

4. Condition of Fuel Tank. THE FUEL TANK AND ACCESSORY EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, PUMP, MOTOR AND FUEL METER CALIBRATION FOR THE TANK, ARE BEING LEASED "AS IS" "WITH ALL ITS FAULTS," WITHOUT WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR CONDITION OR USABILITY IN THEIR PRESENT CONDITION.

5. SPCC Plan. Lessor has registered the above ground storage tanks located in its Fuel

Farm with the Director of the Colorado Division of Oil and Public Safety pursuant to C.R.S. 8-20.5-105 and updated its Spill Prevention Control and Countermeasure (SPCC) Plan as required by law. Lessor shall continue to maintain compliance with those requirements.

6. Quality Control. Lessee shall be responsible for quality control of fuel, loading and unloading fuel to and from the Fuel Tank and compliance with the SPCC Plan for the Fuel Farm and leased Fuel Tank. Lessee shall properly train its employees in the use of the Fuel Farm, Fuel Tank and the SPCC Plan.

7. Maintenance and Repair. Except for structural repairs not caused by the acts or omissions of Lessee, its officers, agents, employees, contractors, or fuel suppliers, Lessee shall be responsible to maintain and keep in good and safe repair and working condition the Fuel Tank and accessory equipment, ordinary wear and tear excepted. Lessee will not be responsible for any reconstruction, remodeling, alteration or modification of the Fuel Tank or Fuel Farm required to meet environmental standards not currently satisfied unless caused by the acts or omissions of Lessee, its officers, agents, employees, contractors or fuel suppliers. If any such activity is required by the Lessor or if Lessor is required to make structural or other repairs to or replace the Fuel Tank or any other fuel tanks located at the Fuel Farm for any reason, including fire or other casualty, or if Lessor is required to remediate or remove any contamination or hazardous materials (including petroleum products) at or from the Fuel Farm, Lessor may, at its sole option, either (a) complete, at its cost, the required activities, replacement, or repairs, (b) negotiate a cost-sharing arrangement with Lessee to complete the required activities, replacement, and repairs, or (c) upon thirty (30) days prior written notice, terminate this Agreement and Lessee's right to store aviation fuel in the Fuel Tank.

8. Lessee's Obligations. Lessee shall

(a) maintain fuel meter calibration on the Fuel Tank and provide semi-annual testing and copies thereof to the Lessor.

(b) provide filters, hoses and nozzles required for the Fuel Tank.

(c) immediately notify the Lessor of any fuel release or spills during the loading or unloading of the Fuel Tank or when fueling or maintaining aircraft. Lessee shall be responsible for clean up to the satisfaction of Lessor of any such fuel releases or spills whether caused by Lessee, its officers, agents, employees, contractors, or fuel suppliers.

9. Lessor's Insurance. Lessor shall maintain storage tank pollution liability insurance covering the fuel tanks located within its Fuel Farm which are being used by Lessor, Lessee and other parties. Lessee shall be named as an additional insured with respect to the Fuel Tank it leases under this Lease. Such insurance shall be in limits of \$1 million each incident, \$1 million aggregate, with a \$10,000 deductible. Lessee shall pay annually to Lessor, on the anniversary date of the Commencement Date, a proportional share of Lessor's cost for storage tank pollution liability insurance. Lessee's portion of such charges shall be in the ratio that the gallon capacity of the Fuel Tank bears to the total gallon capacity of the fuel tanks in Lessor's Fuel Farm being used by Lessor,

Lessee and other parties.

10. Mobile Refuelers. Lessee's mobile refuelers (fuel trucks) and Lessee's use thereof shall meet and comply with all applicable EPA spill prevention control and countermeasure regulations including, if required, drafting and implementing SPCC Plan therefor.

11. Access. Lessee, its employees and aviation fuel suppliers shall access the Fuel Tank upon and over such road or other City Property as they shall be designated from time to time by the Director of Aviation.

12. Lessee's Insurance. Lessee shall include the Fuel Tank, and its use, and activities associated therewith under the liability insurance required to be maintained by Lessee under Section 11 of the Lease.

13. Indemnification. Lessee shall indemnify, defend and hold Lessor, its officers and employees harmless from and against all claims, demands, and causes of action and liabilities arising from or growing out of the negligent acts or omissions of Lessee, its officers, agents, employees, contractors or fuel suppliers or arising out of or resulting from any discharge or release of aviation fuel by Lessee, its officers, agents, employees, contractors or fuel suppliers.

14. Default. If Lessee defaults in the performance of any covenant or provision of this Agreement to be performed by Lessee, and has not cured such default within ten (10) days of receipt of written notice of such default from the Lessor, then Lessor may immediately terminate this Agreement.

15. Assignment. Lessee may not assign this Agreement nor sublet the Fuel Tank, provided, however, Lessee may, with the consent of Lessor, assign this Agreement in conjunction with the assignment of the Lease.

16. Notice. The notice provisions set forth in Section 18 of the Lease are incorporated herein as if set out herein in full.

17. Laws, Rules and Regulations. The Laws, Rules and Regulations set forth in Section 19 of the Lease are incorporated herein as if set out herein in full.

18. F.A.A. Lease Requirements. The F.A.A. Lease Requirements set forth in Section 20 of the Lease are incorporated herein as if set out herein in full.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors.

20. Litigation. In the event of any litigation arising under this Agreement, the court shall award the prevailing party its reasonable costs and expenses including, without limitation, attorney fees. Venue for any such litigation or other proceedings arising under this Agreement shall be

Pueblo County, Colorado.

21. Waiver. No waiver by Lessor of any failure by Lessee to comply with any term or condition of this Agreement shall be or be construed to be a waiver by Lessor of any failure by Lessee to comply with any term or condition of this Agreement.

Executed at Pueblo, Colorado the day and year first above written.

CITY OF PUEBLO

[SEAL]

Attest: *Gina D. Decker*
City Clerk

By *Judy Weaver*
Vice President of the City Council

TRAVELAIRE SERVICES, INC.

Attest: *Jamie DeVenceny*
Secretary

By *Rocky DeVenceny*
Rocky DeVenceny, President
Sam C. Brown
Sam Brown