

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **IHCS, INC. D/B/A MAVEN ASSET MANAGEMENT**, a Florida corporation authorized to do business in the State of Colorado (“**Consultant**”) (collectively the “**Parties**”).

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Denver International Airport (“**DEN**”); and

WHEREAS, the City desires to obtain professional Maximo Enterprise Asset Management Platform license acquisition, hosting, maintenance, and support services; and

WHEREAS, the City has undertaken a competitive process to solicit and receive proposals for such services, and has selected the proposal submitted by Consultant; and

WHEREAS, Consultant’s proposal dated September 11, 2023, is incorporated herein by reference; and

WHEREAS, Consultant is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

1. LINE OF AUTHORITY:

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (the “**CEO**”), authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to DEN Business Technologies. The relevant Senior Vice President (the “**SVP**”), or their designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager’s directions.

2. SCOPE OF WORK AND CONSULTANT RESPONSIBILITIES:

A. Scope of Services. Consultant shall provide professional services and deliverables for the City as designated by the CEO, from time to time and as described in the attached *Exhibit A* (“**Scope of Work**”), in accordance with the schedules and budgets set by the City. Without requiring amendment to this Agreement, the City may, through an authorization or similar form issued by the CEO and signed by Consultant, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

B. Standard of Performance. Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

C. Time is of the Essence. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Consultant shall perform all work under this Agreement in a timely and diligent manner.

D. Subcontractors.

i. In order to retain, hire, and/or contract with an outside subcontractor that is not identified in this Agreement for work under this Agreement, Consultant must obtain the prior written consent of the CEO. Consultant shall request the CEO's approval in writing and shall include a description of the nature and extent of the services to be provided; the name, address and professional experience of the proposed subcontractor; and any other information requested by the City.

ii. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

iii. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

iv. Consultant is subject to Denver Revised Municipal Code (“**D.R.M.C.**”) § 20-112, wherein Consultant shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

v. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Consultant of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

E. Personnel Assignments.

i. Consultant or its subcontractor(s) shall assign all key personnel identified in this Agreement to perform work under this Agreement (“**Key Personnel**”). Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the Director or their authorized representative. In the event that replacement of Key

Personnel is necessary, the City in its sole discretion shall approve or reject the replacement, if any, or shall determine that no replacement is necessary.

ii. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Consultant and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

iii. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel or other personnel, whether of Consultant or its subcontractor(s), is not acceptable or that any such personnel is no longer needed for performance of any work under this Agreement, the Project Manager shall notify Consultant and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the personnel, as applicable.

iv. If Consultant fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Consultant that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Consultant shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Consultant's failure to obtain the Project Manager's approval shall be grounds for Termination for Cause in accordance with this Agreement.

3. OWNERSHIP AND DELIVERABLES:

Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by Consultant or any custom development work performed by Consultant for the purpose of performing this Agreement on or before the day of the payment, whether a periodic or final payment, shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Consultant also agrees to allow the City to review any of the procedures Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Consultant shall deliver any information requested pursuant to this Section within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

4. TERM AND TERMINATION:

A. Term. The Term of this Agreement shall commence on the Effective Date and shall expire THREE (3) years from the Effective Date, unless terminated in accordance with the terms stated herein (the "**Expiration Date**"). The Term of this Agreement may be extended for one additional period of TWO (2) years, on the same terms and conditions, by written notice from

the CEO to Consultant. However, no extension of the Term shall increase the Maximum Contract Amount stated below.

B. If the Term expires prior to Consultant completing the work under this Agreement, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Consultant has no right to compensation for services performed after the Expiration Date without such express approval from the CEO.

C. Suspension and Termination.

i. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the SVP, Consultant shall, as directed in the notice, stop work and submit an invoice for any work performed but not yet billed. Any milestones or other deadlines contained in this Agreement shall be extended by the period of suspension unless otherwise agreed to by the City and Consultant. The Expiration Date shall not be extended as a result of a suspension.

ii. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Consultant.

iii. Termination for Cause. In the event Consultant fails to perform any provision of this Agreement, the City may either:

- a. Terminate this Agreement for cause with ten (10) days prior written notice to Consultant; or
- b. Provide Consultant with written notice of the breach and allow Consultant an Opportunity to Cure.

iv. Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section 4(C)(iii)(b), Consultant shall have five (5) days to commence remedying its defective performance. If Consultant diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Consultant fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Section 4(C)(iii)(a).

v. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Consultant the reasonable cost of only those services performed to the satisfaction of the CEO prior to the notice of suspension or termination. Consultant shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Consultant has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the suspension or termination process or as provided in Section 4(C)(vi) below.

vi. Reimbursement for Cost of Orderly Termination in a Termination for Convenience. In the event of Termination for Convenience of this Agreement pursuant to Section 4(C)(ii), the City shall pay Consultant an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the City, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the City, the City may reimburse Consultant for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Consultant which are directly attributable to the uncompleted portion of Consultant's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Consultant hereunder.

vii. No Claims. Upon termination of this Agreement, Consultant shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

D. Remedies. In the event Consultant breaches this Agreement, Consultant shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Consultant's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Section 8 and Section 9 otherwise provided for in this Agreement.

5. COMPENSATION AND PAYMENT:

A. Maximum Contract Amount. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of **Four Million Dollars and Zero Cents (\$4,000,000.00)** ("**Maximum Contract Amount**"). Consultant shall perform the services and be paid for those services as provided for in this Agreement up to the Maximum Contract Amount.

B. Limited Obligation of City. The obligations of the City under this Agreement shall extend only to monies appropriated and encumbered for the purposes of this Agreement. Consultant acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. Payment Source. For payments required under this Agreement, the City shall make payments to Consultant solely from funds of the Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. Basis for Consultant's Fee. Consultant's fee is based on the time required by its professionals to complete the services under this Agreement. Individual hourly rates are set forth in *Exhibit B* ("Rates").

E. Payment Schedule. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Consultant's fees and expenses in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Amount.

F. Invoices. On or before the fifteenth (15th) day of each month, Consultant shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Consultant under this Agreement. In submitting an Invoice, Consultant shall comply with all requirements of this Agreement and:

- i. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
- ii. Include a statement of recorded hours that are billed at an hourly rate;
- iii. Include the relevant purchase order ("**PO**") number related to the Invoice;
- iv. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
- v. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
- vi. Include the signature of an authorized officer of Consultant, along with such officer's certification they have examined the Invoice and found it to be correct; and
- vii. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
- viii. Late Fees. Consultant understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

G. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Consultant's engagement, are in accordance with this Agreement, and Consultant receives prior written approval of the Director or their authorized representative.

H. Timesheets. Consultant shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets and any other related documents upon the City's request.

I. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final Invoice resulting from a Termination of this Agreement, where the SVP or their authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Section 9.

J. Carry Over. If Consultant's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Consultant if the CEO determines such fees are reasonable and appropriate and provides written approval of the expenditure.

6. MWBE, WAGES AND PROMPT PAYMENT:

A. Minority/Women Business Enterprise.

i. This Agreement is subject to Article V of Chapter 28, Denver Revised Municipal Code ("**D.R.M.C.**"), designated as §§ 28-117 to 28-199 (the "**DSBO Ordinance**"); and any Rules and Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity ("**DSBO**") is: **NO GOALS APPLY.**

ii. Under § 28-132, D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless there is a change in the work by the City under § 28-133, D.R.M.C. The Consultant acknowledges that:

- a. If directed by DSBO, the Consultant is required to develop and comply with the Equity, Diversity and Inclusion Plan ("**EDI Plan**") attached as *Exhibit D* and as it may be modified in the future by DSBO. Unless a separate Utilization Plan is required in accordance with § 28-62(b), D.R.M.C, the EDI Plan shall constitute the Utilization Plan required by § 28-62(b). Along with the EDI Plan and Utilization Plan requirements, the Consultant must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the EDI Plan and/or Utilization Plan and achieving the MWBE participation goal. The EDI Plan and Utilization Plan is subject to modification by DSBO.
- b. If contract modifications are issued under the Agreement, whether by amendment or otherwise, the Consultant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon

increase or decrease in the scope of work of such contract, upon any of the bases under § 28-133, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change to the City.

- c. If there are changes in the work that include an increase in scope of work under this Agreement, whether by amendment or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change or modification shall be immediately submitted to DSBO for notification purposes.
- d. Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing subcontractors shall be subject to the original goal on the contract. The Consultant shall satisfy such goal with respect to the changed scope of work by soliciting new MWBEs in accordance with §§ 28-133, D.R.M.C. The Consultant must also satisfy the requirements under §§ 28-128 and 28-136, D.R.M.C., with regard to changes in MWBE scope or participation. The Consultant shall supply to DSBO all required documentation under §§ 28-128, 28-133, and 28-136, D.R.M.C., with respect to the modified dollar value or work under the contract.
- e. If applicable, for contracts of one million dollars (\$1,000,000.00) and over, the Consultant is required to comply with § 28-135, D.R.M.C., regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor's invoice.
- f. Termination or substitution of an SBE subcontractor requires compliance with § 28-136, D.R.M.C.
- g. Failure to comply with these provisions may subject the Consultant to sanctions set forth in § 28-139 of the DSBO Ordinance.
- h. Should any questions arise regarding DSBO requirements, the Consultant should consult the DSBO Ordinance or may contact the designated DSBO representative at (720) 913-1999.

B. Prompt Pay of MWBE Subcontractors. For agreements of one million dollars (\$1,000,000.00) and over to which D.R.M.C. § 28-135 applies, Consultant is required to comply with the Prompt Payment provisions under D.R.M.C. § 28-135, with regard to payments by Consultant to MWBE subcontractors. If D.R.M.C. § 28-135 applies, Consultant shall make payment by no later than thirty-five (35) days from receipt by Consultant of the subcontractor's invoice.

C. Prevailing Wage. To the extent required by law, Consultant shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

i. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.

ii. Consultant shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

iii. Consultant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

iv. Consultant shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling (720) 913-5000 or emailing: auditor@denvergov.org.

v. If Consultant fails to pay workers as required by the Prevailing Wage Ordinance, Consultant will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Consultant fails to pay required wages and fringe benefits.

D. Compliance with Denver Wage Laws. To the extent applicable to the Consultant's provision of Services hereunder, the Consultant shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Consultant expressly acknowledges that the Consultant is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Consultant, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

E. City Prompt Pay.

i. The City will make monthly progress payments to Consultant for all services performed under this Agreement based upon Consultant's monthly invoices or shall make payments as otherwise provided in this Agreement. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118 applies to invoicing and payment under this Agreement.

ii. Final Payment to Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings, reproducible copies, and other deliverables are delivered to the City, and the Agreement is otherwise fully performed by Consultant. The City may, at the discretion of the SVP, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the SVP.

7. INSURANCE REQUIREMENTS:

A. Consultant shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* (“**Insurance Requirements**”) during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance must be received and accepted by the City before any airport access or work commences.

B. Consultant shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, employees, or subcontractors. Consultant shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Consultant is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant’s inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

8. DEFENSE AND INDEMNIFICATION:

A. Consultant hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims

have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Consultant's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Consultant's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Consultant will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Consultant under the terms of this indemnification obligation. Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

9. DISPUTES:

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to the right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

10. GENERAL TERMS AND CONDITIONS:

A. Status of Consultant. Parties agree that the status of Consultant shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the "**City Charter**"). It is not intended, nor shall it be construed, that Consultant or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of

the CEO. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Consultant hereunder.

C. Americans with Disabilities Act (“ADA”). Consultant shall provide the services specified in this Agreement in a manner that complies with the ADA (42 USC § 12101, *et. seq*) and other federal, state, and local accessibility requirements. Consultant shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns may constitute a material breach of this Agreement. If requested by City, Consultant shall engage a qualified disability consultant to review Consultant’s work for compliance with the ADA (and any subsequent amendments to the statute) and all other related federal, state, and local disability requirements, and Consultant shall remedy any noncompliance found by the qualified disability consultant as soon as practicable.

D. Compliance with all Laws and Regulations. Consultant and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, and the State of Colorado and with the City Charter, ordinances, Executive Orders, and rules and regulations of the City.

E. Compliance with Patent, Trademark and Copyright Laws.

i. Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Consultant prepares any documents which specify any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks and copyrights in such documents.

ii. Pursuant to Section 8, Consultant shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

F. Notices.

i. Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Consultant to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by the City to:

Maven Asset Management
104 Myrtle Ridge Rd.
Lutz, FL 33549

ii. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested; express mail (FedEx, UPS, or similar service) or package shipping or courier service; or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for any other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection (E)(ii).

iii. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

G. Rights and Remedies Not Waived. In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Consultant. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

H. No Third-Party Beneficiaries. The Parties agree that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Consultant receiving services or benefits under this

Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

I. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

J. Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

K. Venue. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

L. Cooperation with Other Contractors.

i. The City may award other contracts for additional work, and Consultant shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Consultant to coordinate its work under this Agreement with one or more such contractors.

ii. Consultant shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

M. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

N. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

O. Coordination and Liaison. Consultant agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Director or their authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Consultant's work.

P. No Authority to Bind City to Contracts. Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

Q. Information Furnished by the City. The City will furnish to Consultant information concerning matters that may be necessary or useful in connection with the work to be performed by Consultant under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Consultant understands and acknowledges that the information provided by the City to Consultant may contain unintended inaccuracies. Consultant shall be responsible for the verification of the information provided to Consultant.

R. Severability. In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

S. Taxes and Costs. Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

T. Environmental Requirements. Consultant, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

i. For purposes of this Agreement the terms “Hazardous Materials” shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), per – and polyfluoroalkyl substances (PFAS), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a “hazardous substance,” “hazardous waste” or “toxic substance” (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.* (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.* (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

ii. Consultant shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

iii. Consultant agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Consultant agrees to evaluate methods to reduce the generation and disposal of waste materials.

iv. In the case of a release, spill or leak as a result of Consultant’s activities under this Agreement, Consultant shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Consultant shall

reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Consultant of any pollutant or hazardous material.

U. Non-Exclusive Rights. This Agreement does not create an exclusive right for Consultant to provide the services described herein at DEN. The City may, at any time, award other agreements to other contractors or consultants for the same or similar services to those described herein. In the event of a dispute between Consultant and any other party at DEN, including DEN itself, as to the privileges of the parties under their respective agreements, CEO shall determine the privileges of each party and Consultant agrees to be bound by CEO's decision.

11. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS:

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Consultant is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. No Discrimination in Employment. In connection with the performance of work under the Agreement, the Consultant may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Consultant shall insert the foregoing provision in all subcontracts.

C. Advertising and Public Disclosures. Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Director or their authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Consultant shall notify the Director in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

i. Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act ("CORA"), C.R.S. §§ 24-72-201 *et seq.*, and Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Consultant asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Consultant to the City shall be considered confidential by the City only to the extent provided in CORA, and

Consultant agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

ii. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Consultant of such request in order to give Consultant the opportunity to object to the disclosure of any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

i. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

ii. Additionally, Consultant agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO, shall have the right to examine any pertinent books, documents, papers and records of Consultant related to Consultant's performance of this Agreement, including communications or correspondence related to Consultant's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

iii. In the event the City receives federal funds to be used toward the services performed under this Agreement, the Federal Aviation Administration (“FAA”), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

F. Use, Possession or Sale of Alcohol or Drugs. Consultant shall cooperate and comply with the provisions of Denver Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Consultant from City facilities or participating in City operations.

G. City Smoking Policy. Consultant and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict of Interest.

i. Consultant and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

ii. Consultant represents that, in its Response or Proposal, as applicable, it disclosed any and all current or potential conflicts of interest of which it is aware, including transactions, work, activities, or conduct that might affect the judgment, actions, or work of Consultant or which might give Consultant an unfair advantage in this or a future procurement. If the Parties identified a conflict of interest and agreed to a plan to mitigate such conflict, Consultant agrees it will comply with that mitigation plan.

iii. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

iv. Consultant has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work Consultant is performing or anticipates performing for other entities on the same or interrelated project or tasks. Consultant must

disclose, in writing, any corporate transactions involving other companies that Consultant knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Consultant fails to disclose in writing actual or potential conflicts, the CEO in their sole discretion, may terminate the Agreement for cause or for its convenience.

12. SENSITIVE SECURITY INFORMATION:

Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information (“**SSI**”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN’s Security Office.

13. DEN SECURITY:

A. Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Consultant or the City by the FAA or TSA. If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Consultant shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Consultant must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Consultant and/or its agents will be deducted directly from the invoice for that billing period.

B. Consultant is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Consultant. The fee/fine will be deducted from the invoice at time of billing.

14. FEDERAL RIGHTS:

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport System. As applicable, Consultant shall comply with the Standard Federal Assurances identified in Appendix.

15. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

A. Attachments. This Agreement consists of Section 1 through 16 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix: Standard Federal Assurances
- Exhibit A: Scope of Work
- Exhibit B: Rates
- Exhibit C: Insurance Requirements
- Exhibit D: EDI Plan
- Exhibit E: Information Technology Provisions

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Section 1 through 16 and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix
- Section 1 through Section 16 hereof
- Exhibit E: Information Technology Provisions
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D

16. CITY EXECUTION OF AGREEMENT:

A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Consultant in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-202369609-00
Contractor Name: IHCS INC d/b/a Maven Asset Management

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202369609-00
IHCS INC d/b/a Maven Asset Management

DocuSigned by:
By: Jennifer Gatza
1983FD413F1D4E8...

Name: Jennifer Gatza
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, **regardless of whether or not the contracts are federally funded**. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, “Sponsor” means The City and County of Denver, Department of Aviation, and “Contractor” or “Consultant” means the Party of the Second Part as set forth in Contract / Lease / Agreement to which this Appendix is attached.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Issued on June 19, 2018

GENERAL CIVIL RIGHTS PROVISIONS

Clause that is used for Contracts:

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.1, Issued on June 19, 2018

Clause that is used for Lease Agreements or Transfer Agreements:

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.2, Issued on June 19, 2018

CIVIL RIGHTS – TITLE VI ASSURANCE

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.1, Issued on June 19, 2018

Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program:

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, Sponsor will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Sponsor will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.3, Issued on June 19, 2018

Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program:

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, Sponsor will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Sponsor will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.4, Issued on June 19, 2018

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.5, Issued on June 19, 2018

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A17.3, Issued on June 19, 2018

APPENDIX
Federal Aviation Administration Required Contract Provisions
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OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A20.3, Issued on June 19, 2018

For additional information, please refer to:

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/



DENVER INTERNATIONAL AIRPORT
8500 Peña Blvd. | Denver, Colorado 80249-6340 | (303) 342-2000

EXHIBIT A

MAXIMO ASSET MANAGEMENT SERVICES STATEMENT OF WORK

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1. GENERAL INFORMATION

1.1. Definitions

The following definitions apply to this SOW:

- 1.1.1 The City and County of Denver, Department of Aviation: Also known as “DEN” or the “City.”
- 1.1.2 “CEO”: The Chief Executive Officer of the City and County of Denver, Department of Aviation.
- 1.1.3 Consultant: The successful proposer that is awarded a contract as a result of this RFP.
- 1.1.4 Authorized Requestor User – a User that has access to only the self-service functions of the Program in accordance with the associated license agreement for the Program.
- 1.1.5 Content – your electronic information, owned by you and created, uploaded, and transferred by a User while accessing the Services.
- 1.1.6 Hosting Environment – the IBM-provided hardware, software, and networking components at an IBM- designated location on which the Program will be installed, and which DEN will access via the Internet. The Hosting Environment includes the production environment, development environment, and a test environment.
- 1.1.7 Internet – the public worldwide network of TCP/IP-based networks.
- 1.1.8 Limited Use Authorized Registered User – a User that has limited access to functions of the Program in accordance with the associated license agreement for the Program.
- 1.1.9 Program – the IBM Maximo software program licensed to DEN by IBM under a separate license agreement.
- 1.1.10 User – the individuals authorized by DEN to access and use the Services. A User includes “Authorized Registered User;” “Authorized Requestor User;” “Limited Use Authorized Registered User” and “Development Environment User.”

2. OVERVIEW

Denver International Airport (DEN) Enterprise Asset Management platform is IBM Maximo. The application is used at DEN to track assets, schedule maintenance, maintain inventory for replacement parts, issue work orders and produce reports for the critical infrastructure of the airport. The project scope is comprised of software license acquisition, hosting and



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support services, professional services, as well as any applicable application hosting and maintenance for IBM Maximo.

3. STATEMENT OF WORK

3.1. Licenses and Maintenance for Applicable Software Subscription

The Consultant shall be an IBM authorized provider from which DEN will obtain its license(s) to the Program under an applicable license agreement(s) as well as maintenance for the Program under the applicable software subscription and support agreement(s).

3.2. Hosting and Support Services

The Consultant will provide the following which will collectively be referred to herein as, the “Services”:

- 3.2.1. Hosting Environment and the technical support to manage the Hosting Environment that will enable DEN to securely access the Program, via the Internet, and use the Program in accordance with the provisions of its associated license agreement
- 3.2.2. The support to install any patches, fixes, and upgrades DEN is entitled to receive under the software subscription and support agreement that pertains to the Program.
- 3.2.3. Proposers should assume our current environment utilizes IBM Maximo Application Suite as a Service (“MAS SaaS”).
- 3.2.4. Proposers may choose to bid for us to remain on MAS SaaS or move to Maximo Application Suite Dedicated (“MAS Dedicated”).
- 3.2.5. Hosting will not be located on premises at DEN and will be administered and managed by the Consultant.
- 3.2.6. If MAS Dedicated is proposed, hosting environments should be dedicated to DEN exclusively for Maximo and not shared with other customers or applications.

3.3. Professional Services

- 3.3.1. Consultant will provide time and materials professional services as needed for key projects or enhancements based on agreed upon statements of work.

3.4. Out of Scope

The following items will be considered out of scope for this proposal:

- 3.4.1. The physical assets and the details of those assets contained within Maximo.

The roles and responsibilities of both parties are listed below.



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4. ROLES AND RESPONSIBILITIES

4.1. Consultant's Responsibilities - Consultant will identify a project manager who will:

- 4.1.1. Review the SOW, and any associated documents, with DEN's project manager.
- 4.1.2. Coordinate and manage the technical activities of Consultant's personnel.
- 4.1.3. Establish and maintain communications through DEN's project manager.
- 4.1.4. Review and administer the project change control procedure with DEN's project manager.
- 4.1.5. Manage, measure, track and evaluate progress under this SOW and resolve any issues with DEN's project manager.
- 4.1.6. Conduct regularly scheduled meetings with DEN's project team to review status; and provide and perform incident, problem, and change management for the Hosting Environment.

4.2. DEN's Responsibilities - DEN will identify a project manager who will:

- 4.2.1. Manage DEN's personnel and responsibilities under this SOW.
- 4.2.2. Serve as the interface between consultant and all of DEN organizations participating in the Services.
- 4.2.3. Administer the project change control procedure with the Consultant's project manager.
- 4.2.4. Participate in any status meetings.
- 4.2.5. Obtain and provide information, data, and decisions within a reasonable time, as determined by DEN, from Consultant's request.
- 4.2.6. Help resolve any issues and escalate issues within DEN's organization, as necessary; and
- 4.2.7. Review with the Consultant's project manager any of DEN's invoice or billing requirements.

5. SERVICES PROVIDED BY CONSULTANT

The parties agree the following services are provided by the Consultant. These activities will be maintained through a cooperative effort between the Consultant Representative and DEN's Project Manager:

- 5.1. Provide, manage, and maintain 3 separate Maximo environments – Development, Test, and Production (individually, an "Environment"; or collectively "Environments").
- 5.2. Install the Program within all Environments (SaaS or Dedicated) and activate the Program entitlements DEN is authorized to receive in accordance with the associated license agreement for the Program.
- 5.3. Configure the Program within all Environments for the number of Users, as specified in the "Charges" section of this SOW, to access and use the Program.



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- 5.4. Provide DEN with URL addresses for all Environments for DEN to access the Program via the Internet.
- 5.5. Provide industry standard Secure Socket Layer (SSL) encryption (128 bit or higher) for Content.
- 5.6. Procure and administer SSL certificates.
- 5.7. Provide File Transfer Protocol (FTP) access to all Environments.
- 5.8. Provide Single Sign On (SSO) and Multi Factor Authentication (MFA) integration services from to the application using DEN's SSO and MFA providers.
- 5.9. Provide 24x7 monitoring services.
- 5.10. Perform system administration activities including but not limited to database updates, application deployments, application troubleshooting, and network optimization.
- 5.11. Perform daily incremental backups and weekly full backups.
- 5.12. Rotate backup tapes weekly to an off-site location as determined by IBM.
- 5.13. Retain such backup tapes for a three-month period.
- 5.14. Apply any fixes, upgrades or enhancements to the Program agreed to between DEN and the Consultant that DEN is entitled to receive under the then-current separate subscription and support agreement.
- 5.15. Deploy changes, created by DEN, between the Development Environment (if applicable) and the Test and Production Environments in accordance with the then-current change management processes.
- 5.16. Refresh content from the Production Environment to the Development and Test Environments on an as needed basis.
- 5.17. Perform hardware and operating system administration activities for Hosting Environment infrastructure including but not limited to database updates, application deployments, application troubleshooting, and network optimization.
- 5.18. Provide, manage, and maintain a replication database for reporting including applicable data connections.
- 5.19. Provide web services or other equivalent integration connection to/from Maximo to facilitate integrations with other DEN enterprise applications.
- 5.20. Provide migration services from our existing host to the new Hosting Environment, including data.
- 5.21. The hosting details should be included in the proposal. Proposals should identify the geographic location (by country) of any data centers utilized in the hosting environment.
- 5.22. On a quarterly basis, Contractor shall schedule a meeting with DEN stakeholders to review system metrics such as system availability, SLA, and open tickets.

6. SERVICES PROVIDED BY DEN

The parties agree the following are DEN's responsibility:

- 6.1. The Internet connection (type and speed) between DEN Users and the Hosting Environment.



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- 6.2. Access the Program using a standard web browser as specified in the Program documentation.
- 6.3. Maintain the correct number of valid Program license rights and entitlements and the software subscription and support during the Term of this SOW.
- 6.4. Follow the incident, problem and change management processes and procedures as provided by DEN;
- 6.5. Ensuring the security and confidentiality of all User IDs, including establishing, distributing, and monitoring unique User identification names and passwords for access to and use of the Services.

7. AVAILABILITY AND SUPPORT

7.1. Availability Objective

The Services allow for access to the Program 24 hours per day, seven days per week. The availability objective for such access to the Program is 99.9% during any given month during the Term of this SOW (“Availability”). Availability is measured at the Hosting Environment monthly, exclusive of any Outages. An “Outage” is DEN’s inability to access the Program or recognition by consultant that DEN is unable to access the Program.

Unless otherwise agreed upon in writing between DEN and the Consultant ahead of time, the standard maintenance period will be each Saturday morning from 2:00 GMT until 5:00 GMT (Friday from 10:00 pm through Saturday at 1:00 am, Eastern Time) at the Hosting Environment location. The Program may be available during scheduled maintenance periods; however, performance may be slower than normal, and the Program may become unavailable during any such scheduled maintenance periods. The Availability measurement will begin 30 days after access to the Program is made available to DEN via the Internet.

The Consultant will monitor the Availability and will investigate any performance deviations or Outages. To the extent there are any performance deviations or Outages, the Consultant will use commercially reasonable efforts to restore the Services. The Consultant will examine root causes, identify problems, and attempt to minimize recurrences by making recommendations for actions to be taken by DEN and IBM.

7.2. Exclusions – Outages under this SOW are:

- 7.2.1. Scheduled maintenance periods.
- 7.2.2. Planned activities, such as database maintenance and fixes, upgrades, or enhancements to the Program, as agreed to with DEN.



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8. SUPPORT

Should DEN require technical support for the Program, DEN may contact the Consultant. The Consultant will open and manage tickets on DEN's behalf using the IBM Support Center, if necessary.

9. PROJECT CHANGE CONTROL PROCEDURE

The following process will be followed if a change to this SOW is required.

- 9.1. A Project Change Request ("PCR") will be the vehicle for communicating a change. The PCR must describe the change, the rationale for the change and the effect the change will have on the SOW. The investigation and the implementation of changes may result in modifications to the Term, charges, and other terms of this SOW and the Agreement.
- 9.2. A PCR must be signed by authorized representatives from both parties to authorize implementation of the change. Until a change is agreed to in writing, both parties will continue to act in accordance with the latest agreed version of the SOW.

10. ADDITIONAL USERS

In the event DEN requires an additional number of Users to be enabled to access and use the Program, DEN will notify the Consultant in writing and the Consultant will provide DEN with a Project Change Request ("PCR") for such additional Users within a reasonable period after DEN's request. The Consultant will be required to obtain the correct number of Program licenses and entitlements for such Users.

11. ADDITIONAL TERMS AND CONDITIONS

Continuation of Services - DEN will notify Consultant in writing at least 60 days prior to expiration of the current Term if DEN wishes to either a) continue the Services without interruption, beyond any current Term; or b) terminate the Services at the end of any current Term. If DEN fails to do either of the foregoing, the Consultant will terminate the Services immediately upon expiration of the current Term.

EXHIBIT B - PRODUCTS

All proposals must include a Cost Breakdown. Proposers are asked to complete the following cost tables with their best solution pricing.

Line #	DESCRIPTION OF PRODUCT <i>(If Different, please add in "Vendor" Section)</i>	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
1	DEN: IBM MAS SaaS (Assume an estimate of 80 Limited users) *See reference chart below VENDOR: Equivalent: Maximo as a Service (MaaS) on Projetech Cloud. Includes 79 limited users and one Base Admin user. A minimum of one admin user is required. Includes a total of 168 AppPoints. Year 1 includes \$21,426 in initial setup charges. For this reason, Year 2 is reflected as a price decrease. Additional AppPoints are available at a cost of \$250/AppPoint/year in Year 1 and are subject to a 5% price increase annually. Percent Price Change YOY (+/-)	\$ 131,278.80	\$ 115,345.44	\$ 121,112.71	\$ 127,168.35	\$ 133,526.76	\$ 628,432.06
2	DEN: IBM MAS Dedicated VENDOR: Not available - service discontinued. Percent Price Change YOY (+/-)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	DEN: IBM MAS SaaS Additional Non Production Instances (2) VENDOR: Equivalent: Maximo as a Service (MaaS) on Projetech Cloud. Line 1 MaaS service includes one non-production environment. Line 3 adds one <i>additional</i> environment, bringing the total to two non-production environments. Percent Price Change YOY (+/-)	\$ 26,250.00	\$ 27,562.50	\$ 28,940.63	\$ 30,387.66	\$ 31,907.04	\$ 145,047.83
4	DEN: IBM MAS Dedicated Additional Non Production Instances (2) VENDOR: Not available - service discontinued. Percent Price Change YOY (+/-)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	VENDOR: Percent Price Change YOY (+/-)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	VENDOR: Percent Price Change YOY (+/-)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

EXHIBIT B - PROFESSIONAL SERVICES

The table below represents typical job classifications for the Scope of Work. Fill in the hourly rate that will be in effect for the duration of the project. If other positions are being proposed, please include below using "Other" and add the job title.

JOB TITLE	Hourly Rate
Program Manager / Sr. Project Manager	\$ 160.00
Project Manager	\$ 155.00
Technical Architect	\$ 155.00
Developer	\$ 150.00
Maximo Functional Consultant	\$ 150.00
Maximo Trainer	\$ 150.00

Exhibit B - Reference Chart

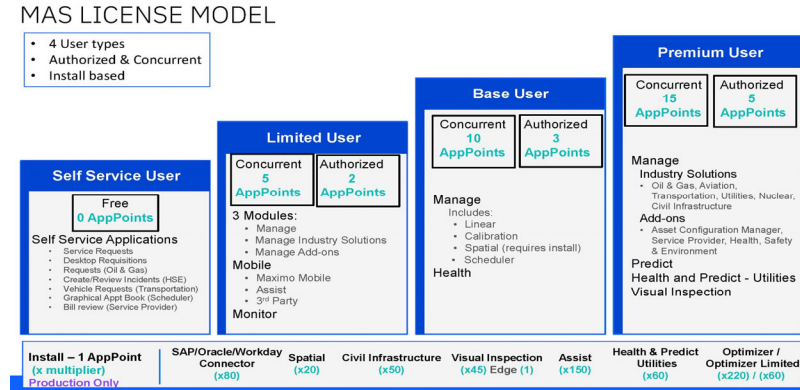


EXHIBIT C

CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION PROFESSIONAL SERVICES AGREEMENT

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: contractadmininvoices@flydenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

B. Defined Terms

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Contractor” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

C. Coverages and Limits

1. Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual policy aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.

2. Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.

- c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
 - d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. **Workers' Compensation and Employer's Liability Insurance**
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. **Property Insurance**
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
5. **Technology Errors and Omissions**
Contractor shall maintain a minimum limit of \$5,000,000 per occurrence and \$5,000,000 annual policy aggregate including cyber liability, network security, privacy liability and product failure coverage.
- a. Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.
6. **Excess/Umbrella Liability**
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.

7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.



EXHIBIT D

EQUITY, DIVERSITY, AND INCLUSION PLAN (EDI PLAN)

The Proposer shall describe what they have done to engage with historically underutilized multicultural businesses in their ongoing operations. The engagement should be an innovative, comprehensive, open, and transparent approach that makes a significant impact through the promotion of equity, diversity, and inclusion to improve opportunities that ensure fair and just access to jobs, housing, education, mobility options, and healthier communities. This engagement may include, but is not limited to, utilization of historically underutilized multicultural businesses, mentor / protégé programs, prompt payment, workforce expansion, joint ventures, technical assistance, access to capital platforms and community outreach.



As a small, woman-owned business, Maven understands first-hand how valuable DEI initiatives, both formal and informal, can be to a growing business. Thus, Maven is committed to giving back by seeking and empowering other small businesses, particularly those with historically underutilized multicultural leadership. As a small but growing firm, Maven has committed to implementing a formal DEI policy by April 2024. In the meantime, we are actively monitoring and improving our cultural commitment to DEI, identifying which actions are most helpful, and building them into our written policy. Such actions include:

1. Actively networking with small business groups that aim to strengthen minorities, the disabled, and others who may be otherwise underutilized. In doing so, we establish meaningful relationships with other business owners that we might not otherwise meet by chance. These organizations and events provide us with an opportunity to consciously and deliberately grow our network of eligible minority and disadvantaged businesses, allowing us to include them in future business opportunities.

Maven's CEO, Jennifer Gatza, regularly participates in several such groups, including two that are focused on peer networking amongst small, woman-, minority- and diversity-owned businesses. This allows her to identify business opportunities with other small businesses, share the lessons she has learned over 15 years in business, and learn from each of them, as well.

2. Monitoring local registries of small, woman-owned and minority-owned business in the cities and regions where we actively work. While Maven works throughout the USA and Canada, many small businesses work at the local level. To include them in opportunities within their own communities, Maven will continue to identify and seek out disadvantaged businesses in the communities we serve. We believe this is beneficial for all of us: the small business has an opportunity to contribute meaningfully to larger project; our clients gain access to local, skilled resources; and Maven grows the wealth of diverse talent available to our project team.
3. Providing prompt payment to subcontractors, often on terms of Net 15, but rarely exceeding Net 30. We provide this option regardless of the payment terms we have established with our clients. Liquidity and cash flow are critical to small businesses. Organizations with culturally-diverse ownership struggle even more than most to obtain funding, making prompt payment essential. We find this arrangement to be mutually beneficial. Because our small, disadvantaged business partners know they can count on us for prompt payment, they consistently provide high quality work that is delivered on time.
4. Granting access to technical systems and training materials. We provide access to the tools and systems needed to effectively support Maven's projects, including but not limited to Maximo systems, laptops and other technology devices, and training systems to effectively support our project. These tools and systems are often out of budget for small companies. Access enables them to provide better service for Maven and provides education and experience that they may use on future projects, as well.
5. Mentoring and supporting youth and emerging professionals to pursue their career goals, providing guidance and encouragement as they move forward. Maven's CEO recently spent several years working with Million Women Mentors to support disadvantaged school-aged girls to consider STEM careers, providing career and life guidance ranging from scientific creativity to surviving middle school. Maven is actively seeking additional partnerships and is encouraging each employee, particularly our leaders, to mentor those who do not readily have access to such support.



6. Establishing and maintaining an internal culture of diversity, equity and inclusion. While the question in this RFP is focused on developing partnerships with other businesses, the DEI mindset must start from within. Our own diversity grows our empathy and understanding of one another, and provides a continuous reminder that DEI is not simply a box to check – we are positively impacting people, families, the richness of our own organization and the value brought to our clients' projects.

EXHIBIT E, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the Agreement between the City and Consultant to which this Exhibit is attached. Unless the context clearly requires a distinction between the Agreement and this Exhibit, all references to “Agreement” shall include this Exhibit.

EXHIBIT E, INFORMATION TECHNOLOGY PROVISIONS

1. **SERVICE LEVEL AGREEMENTS; FUNCTIONALITY MATRIX**: To the extent the Consultant provides service level commitments in connection with its provision of any Work purchased hereunder, the Consultant shall be fully responsible for the delivery and maintenance of the Work, in whole and/or in part, in accordance with the terms of a service level agreement to be mutually agreed to by the Parties. The Consultant agrees that the Work shall also conform to the functionality matrix to be mutually agreed to by the Parties.
2. **GENERAL TECHNOLOGY SPECIFICATIONS**
 - 2.1. **Vendor Supported Releases**: The Consultant shall maintain the currency of all third-party software used in the development and execution or use of the Work with third-party vendor approved and supported releases, including, but not limited to, all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source.
 - 2.2. **Identity Management**: The City's Identity and Access Management ("IdM") system is an integrated infrastructure solution that enables many of the City's services and online resources to operate more efficiently, effectively, and securely. All new and proposed applications must utilize the authentication and authorization functions and components of IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions regardless of where the application is hosted.
 - 2.3. **Additional Products or Services**: The Parties acknowledge that the Consultant will continue to enhance and/or modify its existing products or services. To use those enhanced products or services, the City shall be entitled to order those offerings at any time throughout the duration of this Agreement provided the pricing is set out in this Agreement. Once agreed upon by the Parties, additional products or services shall be subject to the same terms and conditions as contained herein and any order placed by the City shall not create any additional binding conditions on the City and shall not act as an amendment of the terms and conditions of this Agreement. If additional products or services are requested by the City, the Parties shall follow the agreed upon order process and if no process is outlined, then the CIO, or other designated Agency personnel, shall be authorized to sign any necessary forms to acquire the products/services on behalf of the City. Additional licenses shall be prorated and co-termed with current licensing contained in this Agreement.
 - 2.4. **Reoccurring Security Audits**: Prior to the Effective Date of this Agreement, the Consultant, will at its expense conduct or have conducted the following, and thereafter, the Consultant will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Security Breach: (i) a SSAE 16/SOC 2 or other mutually agreed upon audit of the Consultant's security policies, procedures and controls; (ii) a quarterly external and internal vulnerability scan of the Consultant's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability,

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age, and remediation plan for all issues identified as critical or high; and (iii) a formal penetration test performed by qualified personnel of the Consultant's systems and facilities that are used in any way to deliver Work under this Agreement. The Consultant will provide the City the reports or other documentation resulting from the above audits, certifications, scans, and tests within seven (7) business days of the Consultant's receipt of such results. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high or medium. Based on the results and recommendations of the above audits, the Consultant will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation. In addition, the Consultant shall comply with the City's annual risk assessment and the results thereof. The City may require, at the Consultant's expense, that the Consultant perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of Consultant's receipt of such results. The Consultant will provide the City the results of the above audits. If additional funds are required to perform the tests required by the City that are not accounted for in this Agreement, the Parties agree to amend this Agreement as necessary. The Consultant shall also protect data against deterioration or degradation of quality and authenticity by, at minimum, having a third party perform annual data integrity audits

2.5. Transition of Services: Upon expiration or earlier termination of this Agreement or any Work provided hereunder, the Consultant shall accomplish a complete transition of the Services from the Consultant to the City or any replacement provider designated solely by the City without any interruption of or adverse impact on the Services or any other services provided by third parties under this Agreement. The Consultant shall cooperate fully with the City or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the City. All Services related to such transition shall be performed at no additional to the City. The Consultant shall extend this Agreement monthly if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

2.6. Disaster Recovery and Continuity

2.6.1. The Consultant shall maintain a continuous and uninterrupted business continuity and disaster recovery program with respect to the Work provided under this Agreement. The program shall be designed, in the event of a significant business disruption affecting the Consultant, to provide the necessary and sufficient capabilities, processes, and procedures to enable the Consultant to resume and continue to perform its duties and obligations under this Agreement without undue delay or disruption. In the event of equipment failures, the Consultant shall, at no additional expense to the City, take reasonable steps to minimize service interruptions, including using any back-up facilities where appropriate. Upon

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request, the Consultant shall provide the City with a copy of its disaster recovery plan and procedures.

2.6.2. Prior to the Effective Date of this Agreement, the Consultant shall, at its own expense, conduct or have conducted the following, and thereafter, the Consultant will, at its own expense, conduct or have conducted the following at least once per year:

2.6.2.1. A test of the operability, sufficiency, and completeness of business continuity and disaster recovery program's capabilities, processes, and procedures that are necessary to resume and continue to perform its duties and obligations under this Agreement.

2.6.2.2. Based upon the results and subsequent recommendations of the testing above, the Consultant will, within thirty (30) calendar days of receipt of such results and recommendations, promptly modify its capabilities, processes, and procedures to meet its obligations under this Agreement and provide City with written evidence of remediation.

2.6.2.3. Upon request, the Consultant shall provide the City with report summaries or other documentation resulting from above testing of any business continuity and disaster recovery procedures regarding the Services provided under this Agreement.

2.6.2.4. The Consultant represents that it is capable, willing, and able to provide the necessary and sufficient business continuity and disaster recovery capabilities and functions that are appropriate for it to provide services under this Agreement.

3. DELIVERY AND ACCEPTANCE

3.1. Acceptance & Rejection: Software, technology services, or other deliverables created and/or delivered pursuant to this Agreement (collectively, "Deliverables") will be considered accepted ("Acceptance") only when the City provides the Consultant affirmative written notice of acceptance that such Deliverable has been accepted by the City. Such communication shall be provided within a reasonable time from the delivery of the Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the City shall be final, except in cases of Consultant's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or the Consultant's gross negligence or willful misconduct. The City may reject a Deliverable if it materially deviates from its specifications and requirements listed in this Agreement or its attachments by written notice setting forth the nature of such deviation. In the event of such rejection, the Consultant shall correct the deviation, at its sole expense, and redeliver the Deliverable within fifteen (15) days. After redelivery, the Parties shall again follow the acceptance procedures set forth herein. If any Deliverable does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. If the City ultimately rejects a Deliverable, or repudiates acceptance of it, the Consultant will refund

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to the City all fees paid, if any, by the City with respect to any rejected Deliverable. Acceptance shall not relieve the Consultant from its responsibility under any representation or warranty contained in this Agreement, and payment of an invoice prior to Acceptance does not grant a waiver of any representation or warranty made by the Consultant.

- 3.2. **Quality Assurance**: The Consultant shall provide and maintain a quality assurance system acceptable to the City for Deliverables under this Agreement and shall provide to the City only such Deliverables that have been inspected and found to conform to the specifications identified in this Agreement and any applicable solicitation, bid, offer, or proposal from which this Agreement results. The Consultant's delivery of any Deliverables to the City shall constitute certification that any Deliverables have been determined to conform to the applicable specifications, and the Consultant shall make records of such quality assurance available to the City upon request.
- 3.3. **License to Deliverables**: Effective upon Acceptance of each Deliverable, the Consultant grants the City a nonexclusive, royalty-free license to reproduce, modify, display, and use such Deliverable, and all intellectual property rights necessary to use the Deliverable as authorized, as necessary for the City's internal business purposes, provided the City complies with any license restrictions set forth in this Agreement and any attachments thereto. The City will not reverse engineer or reverse compile any part of a Deliverable unless agreed by the Parties in writing.
- 3.4. **Incorporation of Deliverables**: Upon Acceptance, each Deliverable will thereafter be subject to this Agreement's terms, including without limitation license, warranty, and indemnity terms.

4. **WARRANTIES AND REPRESENTATIONS**

- 4.1. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, the Consultant warrants that any Work or Deliverable provided by the Consultant under this Agreement shall be free from material defects and shall function as intended and in material accordance with the applicable specifications. The Consultant warrants that any Work or Deliverable, and any media used to distribute it, shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function or technological means designed to disrupt, interfere with, or damage the normal operation of the Work or Deliverable and the use of City resources and systems. The Consultant's warranties under this Section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- 4.2. Upon notice of any defect or material nonconformity, the Consultant shall submit to the City in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the City to ascertain the feasibility,

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risks, and impacts of each recommendation. The City's remedy for such defect or material non-conformity shall be:

- 4.2.1.** The Consultant shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the City. The Consultant shall deliver, at no additional cost to the City, all documentation required under this Agreement as applicable to the corrected Work or Deliverable; or
- 4.2.2.** The Consultant shall refund to the City all amounts paid for such Work or Deliverable, as well as pay to the City any additional amounts reasonably necessary for the City to procure alternative goods or services of substantially equivalent capability, function, and performance.
- 4.3.** Any Work or Deliverable delivered to the City as a remedy under this Section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.
- 4.4. Customization Services:** The Consultant warrants that it will perform all customization services, if any, in a professional and workmanlike manner. In case of breach of the warranty of the preceding sentence, the Consultant, at its own expense, shall promptly re-perform the customization services in question or provide a full refund for all nonconforming customization services.
- 4.5. Third-Party Warranties and Indemnities:** The Consultant will assign to the City all third-party warranties and indemnities that the Consultant receives in connection with any Work or Deliverables provided to the City. To the extent that the Consultant is not permitted to assign any warranties or indemnities through to the City, the Consultant agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Consultant is permitted to do so under the terms of the applicable third-party agreements.
- 4.6. Intellectual Property Rights in the Software:** The Consultant warrants that it is the owner of all Deliverables, and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property rights to the Deliverables in this Agreement without the further consent of any third party and without conditions or requirements not set forth in this Agreement. In the event of a breach of the warranty in this Section, the Consultant, at its own expense, shall promptly take the following actions: (i) secure for the City the right to continue using the Deliverable as intended; (ii) replace or modify the Deliverable to make it non-infringing, provided such modification or replacement will not materially degrade any functionality as stated in this Agreement; or (iii) refund 100% of the fee paid for the Deliverable for every month remaining in the Term, in which case the Consultant may terminate any or all of the City's licenses to the infringing Deliverable granted in this Agreement and require return or destruction of copies thereof. The Consultant also

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warrants that there are no pending or threatened lawsuits, claims, disputes, or actions: (i) alleging that any of the Work or Deliverables infringes, violates, or misappropriates any third-party rights; or (ii) adversely affecting any Deliverables or Services, or the Consultant's ability to perform its obligations hereunder.

4.7. Disabling Code: The Work and any Deliverables will contain no malicious or disabling code that is intended to damage, destroy, or destructively alter software, hardware, systems, or data. The Consultant represents, warrants and agrees that the City will not receive from the Consultant any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system, resources, or data (a "Disabling Code"). In the event a Disabling Code is identified, the Consultant shall take all steps necessary, at no additional cost to the City, to: (i) restore and/or reconstruct all data lost by the City as a result of a Disabling Code; (ii) furnish to City a corrected version of the Work or Deliverables without the presence of a Disabling Code; and, (iii) as needed, re-implement the Work or Deliverable at no additional cost to the City. This warranty shall remain in full force and effect during the Term.

5. ACCESSIBILITY AND WEBSITE COMPLIANCE

5.1. Compliance: The Consultant shall comply with, and the Work and Work Product provided under this Agreement shall be in compliance with, all applicable provisions of §§ 24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established pursuant to Section § 24-85-103 (2.5), C.R.S (collectively, the "Guidelines"). The Consultant shall also comply with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

5.2. Testing: The City may require the Consultant's compliance to be determined by a third party selected by the City to attest that the Consultant's has performed all obligations under this Agreement in compliance with §§ 24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established pursuant to Section § 24-85-103 (2.5), C.R.S.

5.3. Validation and Remediation: The Consultant agrees to promptly respond to and resolve any instance of noncompliance regarding accessibility in a timely manner and shall remedy any noncompliant Work Product, Service, or Deliverable at no additional cost to the City. If the City reasonably determines accessibility issues exist, the Consultant shall provide a "roadmap" for remedying those deficiencies on a reasonable timeline to be approved by the City. Resolution of reported accessibility issue(s) that may arise shall be addressed as high priority, and failure to make satisfactory progress towards compliance with the Guidelines, as agreed to in the roadmap, shall constitute a breach of contract and be grounds for termination or non-renewal of this Agreement.

EXHIBIT E, INFORMATION TECHNOLOGY PROVISIONS**6. DATA MANAGEMENT, SECURITY, AND PROTECTION**

6.1. Compliance with Data Protection Laws and Policies: The Consultant shall comply with all applicable federal, state, local laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Consultant under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Consultant's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*; C.R.S., IRS Publication 1075; the Health Information Portability and Accountability Act ("HIPAA"); the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services ("CJIS") Security Policy for all Criminal Justice Information; the Colorado Consumer Protection Act, the Payment Card Industry Data Security Standard ("PCI-DSS"), and the Minimum Acceptable Risk Standards for Exchanges (collectively, "Data Protection Laws"). If the Consultant becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Consultant shall promptly notify the City. The Consultant shall comply with all rules, policies, procedures, and standards issued by the City's Technology Services Security Section. The most recent copy is available upon request.

6.2. Safeguarding Protected and Sensitive Information: "Protected Information" means data, regardless of form, that has been designated as sensitive, private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student and education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public under CORA. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Consultant, the Consultant shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to

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access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Consultant has been contracted to maintain, store, or process personal information on the City's behalf, the Consultant is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

- 6.3. Data Access and Integrity:** The Consultant shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the Data Protection Laws applicable to the Consultant's performance hereunder to ensure the security and confidentiality of data. The Consultant shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of data; restrict access to data as necessary; and ensure the proper and legal use of data. The Consultant shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. Unless otherwise required by law, the City has exclusive ownership of all City Data under this Agreement, and the Consultant shall have no right, title, or interest in City Data obtained in connection with the services provided herein. The Consultant has a limited, nonexclusive license to access and use data as provided in this Agreement solely for the purpose of performing its obligations hereunder. The City retains the right to access and retrieve City Data stored on the Consultant's infrastructure at any time during the Term. All City Data created and/or processed by the Work, if any, is and shall remain the property of the City and shall in no way become attached to the Work, nor shall the Consultant have any rights in or to the City Data without the express written permission of the City. This Agreement does not give a Party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this Agreement. The City retains the right to use the Work to access and retrieve data stored on the Consultant's infrastructure at any time during the Term. Upon written request, the Consultant shall provide the City its policies and procedures to maintain the confidentiality of City Data and Protected Information.
- 6.4. Response to Legal Orders for City Data:** If the Consultant is required by a court of competent jurisdiction or administrative body to disclose City Data, the Consultant shall first notify the City and, prior to any disclosure, cooperate with the City's reasonable requests in connection with the City's right to intervene, quash, or modify the legal order, demand, or request, and upon request, provide the City with a copy of its response. If the City receives a subpoena, legal order, or other legal demand seeking data maintained by the Consultant, the City will promptly provide a copy to the Consultant. Upon notice and if required by law, the Consultant shall promptly provide the City with copies of its data required for the City to meet its necessary disclosure obligations.
- 6.5. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, the Consultant shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the City's data and record retention policies. All City Data shall be encrypted in transmission, including by web

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interface, and in storage by an agreed upon National Institute of Standards and Technology (“NIST”) approved strong encryption method and standard. The Consultant shall not transfer or maintain data under this Agreement outside of the United States without the City’s express written permission. Upon termination of this Agreement, the Consultant shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Consultant is required by law to retain data, including Protected Information. Upon the City’s request, the Consultant shall confirm, by providing a certificate, the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Consultant’s exclusive custody, the City may request, at not additional cost to the City, that the Consultant preserve such data outside of record retention policies. The City will promptly coordinate with the Consultant regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Consultant shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Consultant shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable. The Consultant and its third-party services providers must develop and maintain a written policy for the destruction of such records.

6.6. Software and Computing Systems: At its reasonable discretion, the City may prohibit the Consultant from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information received under this Agreement. The Consultant shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Consultant shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Consultant shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, and enhancements or updates consistent with evolving industry standards. The Consultant shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to, anti-virus and anti-malware protections. The Consultant shall ensure that any underlying or integrated software employed under this Agreement is updated on a regular basis and does not pose a security threat.

6.7. Background Checks: The Consultant shall ensure that, prior to being granted access to Protected Information, the Consultant’s agents, employees, SubConsultants, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual

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instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data. If the Consultant will have access to federal tax information ("FTI") under this Agreement, the Consultant shall comply with the background check and other provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. § 552a, *et. seq.*, related to federal tax information.

6.8. SubConsultants and Employees: If the Consultant engages a SubConsultant under this Agreement, the Consultant shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the Work provided. The Consultant shall monitor the compliance with such obligations and remain responsible for its SubConsultant's compliance with the obligations of this Agreement and for any of its SubConsultants acts or omissions that cause the Consultant to breach any of its obligations under this Agreement. Unless the Consultant provides its own security protection for the information it discloses to a third party, the Consultant shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Consultant and any of its SubConsultants, agents, assigns, employees, or volunteers. Upon request, the Consultant shall provide the City copies of its record retention, data privacy, and information security policies. The Consultant shall ensure all SubConsultants sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force so long as the SubConsultant has access to any data disclosed under this Agreement. Upon request, the Consultant shall provide copies of those signed nondisclosure agreements to the City.

6.9. Security Audit Access: The Consultant shall permit the City reasonable access and shall provide the City with information reasonably required to assess the Consultant's compliance with its security and confidentiality obligations under this Agreement. Such access and information shall include an annual SSAE 16/SOC 2 audit, or an alternative audit recommended by the City, and the Consultant shall comply with the City's annual risk assessment and the results thereof. To the extent the Consultant controls or maintains information systems used in connection with this Agreement, the Consultant shall provide the City with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application-level risk assessments, and other security assessment activities as required by this Agreement or

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reasonably requested by the City. The Consultant will remediate any vulnerabilities to comply with its obligations hereunder.

6.10. Unauthorized Data Disclosure

6.10.1. Security Breach: If the Consultant becomes aware of a suspected or unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of City Data, Protected Information, or other data maintained or provided by the City (“Security Breach”), the Consultant shall notify the City in the most expedient time and without unreasonable delay but no less than forty-eight (48) hours. A Security Breach shall also include, without limitation, (i) attempts to gain unauthorized access to a City system or City Data regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City’s system hardware, firmware, or software characteristics without the City’s knowledge, instruction, or consent. Any oral notice of a Security Breach provided by the Consultant shall be immediately followed by a written notice to the City. The Consultant shall maintain documented policies and procedures for Security Breaches including reporting, notification, and mitigation.

6.10.2. Cooperation: The Consultant shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and as required by law. The Consultant shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Consultant shall not be obligated to disclose confidential business information or trade secrets. Unless the Consultant can establish that neither it nor any of its agents, employees, assigns, or SubConsultants are the cause or source of the Security Breach, the Consultant shall indemnify, defend, and hold harmless the City for all claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach and any required lawful notices.

6.10.3. Reporting: The Consultant shall provide a written report to the City that identifies: (i) the nature of the unauthorized use or disclosure; (ii) the data used or disclosed; (iii) the parties responsible for the Security Breach (if known); (iv) what the Consultant has done or shall do to mitigate the effect of the Security Breach; and (v) what corrective action the Consultant has taken or shall take to prevent future Security Breaches. Except as expressly required by law, the Consultant will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.

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- 6.10.4. Costs:** Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Consultant will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any Security Breach, including but not limited to providing notification to third parties whose data was compromised and to regulatory bodies, law-enforcement agencies, or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Security Breach in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Security Breach.
- 6.10.5. Remediation:** After a Security Breach, the Consultant shall take steps to reduce the risk of incurring a similar type of Security Breach in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City. The City may adjust or direct modifications to this plan, and the Consultant shall make all reasonable modifications as directed by the City. The City may, in its sole discretion and at the Consultant's sole expense, require the Consultant to engage the services of an independent, qualified, City-approved third party to conduct a security audit. The Consultant shall provide the City with the results of such audit and evidence of the Consultant's planned remediation in response to any negative findings. Implementation of corrective actions to remedy the Security Breach and restore the City's access to the Work shall occur within five (5) calendar days of the date the Consultant becomes aware of any Security Breach.
- 6.11. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that the Consultant protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Consultant may reasonably decline the City's request to provide additional protections. If such a request requires the Consultant to take steps beyond those contained herein, the Consultant shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Consultant to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of this Agreement, and the

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Consultant shall continue to safeguard all data for so long as the data remains confidential or protected and in the Consultant's possession or control.