

# CONTRACT REVIEW / PAYMENT SUMMARY SHEET

Page \_\_\_\_ of \_\_\_\_

Primary Agency

Agency	Aviation	Business Unit	PLANE
Contractor/ Grantor Name	T&C Assest Management LLC/HREC	Vendor Number	46696
Type	Expenditure	Amendment No.	Original
Contract Number	CE72331	Contract Term	10/15/07 - 10/14/08 + 6 mo*
Contract Amount	\$250,000.00	Available Budget	\$7,013,087.53
Ordinance No/Series		Form 42 Date	24-Dec-07
CFDA No.		Clerk Filing Number	08-339

Audit Clause	<input checked="" type="checkbox"/>	Prevailing Wage	<input type="checkbox"/>	Bond	<input type="checkbox"/>
Insurance	<input checked="" type="checkbox"/>	Davis Bacon	<input type="checkbox"/>	Retainage	

Amount	Line (2 char)	Dist (3 char)	Sch. (3 char)	Account (6 char)	Fund (5 char)	Org (7 char)	Program (5 char)	Sub-CLIN (5 char)	Project/Grant (5 char min / 15 char - max)	Act (2 char)
\$250,000.00				600400	73130	6013000				

## Payment Terms

Monthly invoices from contractor, paid at the rate of \$325/hour. Total payments not to exceed \$250,000

Sole source contractor justification is attached.

\*Term may be extended for up to 6 months upon written notice from the manager of aviation to contractor for completion of previously authorized services, subject to the hourly fees and reimbursable expenses detailed in paragraph 3.

Reimbursable's	Subject to contract maximum and found in paragraph 3.B.
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Purpose	Services in connection with development and financing of a Terminal Hotel at DIA
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Mayor's Sign Date	15 April, 2008	
Date Received	04/28/08	
Contract Reviewer Name and Date	DP	14 May, 2008
Auditor's Sign Date	15 May, 2008	

## MEMORANDUM

TO: Jim McIntyre, Director of Purchasing

THROUGH: John Noë, Assistant Deputy Manager of Aviation/ Technical Services

FROM: Cheryl Cohen-Vader, Chief Deputy Manager of Aviation

SUBJECT: JUSTIFICATION – SOLE SOURCE

Re: 20-64(a)(1) D.R.M.C. CE 72331

We are requesting that a purchase order be issued to Hospitality Real Estate Counselors (HREC) in the amount of \$250,000 for the following reasons:

HREC is exclusively focused on the hospitality industry providing an array of services including, transaction counseling, development management and asset management. In this capacity HREC would aid DIA and the City in evaluating the RFP responses for an airport hotel. HREC would analyze and advise us of the impact on operations and performance of the hotels as proposed. They would also help us with the initial negotiations for any short-listed proposals.

The rationale for sole sourcing this service is as follows:

- (1) HREC is the only independent service of this type in the state / region. They are a nationally recognized firm headquartered in Greenwood Village.
- (2) HREC is one of the few companies of this type that have worked with governmental entities. They understand that governments may have different goals, objectives and risk profiles that that of the private sector.
- (3) HREC worked with the City of Denver on the initial planning, selection and negotiations for the convention center hotel and is familiar with our financial policies and governmental structure.
- (4) HREC, as local firm, is familiar with the local hotel market demand and supply issues. Their analysis and recommendation provides a more hands-on understanding of our market as opposed to merely looking at and reviewing a collection of data.

Each of the items points toward providing us with lower cost and timely availability and response as we seek to move the RFP evaluation and selection process expeditiously. Managing cost is especially important at this stage they impact airport's funds. If the project proceeds, this cost can / may then be billed to the project. If this project does not proceed then the impact on airport funds has been managed.

Should we proceed more towards actually doing the hotel project we would then RFP for continued advisory and asset manager services.



**DENVER**  
THE MILE HIGH CITY

Department of Law  
Airport Legal Services  
Denver International Airport

8500 Peña Boulevard, 9th Floor

Denver, CO 80249-6340

p: 303-342-2540

f: 303-342-2552

www.denvergov.org/city\_attorney

## CONTRACT ROUTE SHEET

Initiating Agency: **Airport Legal Services**

Date Sent to Mayor: 4/4/08

Contract Control No.: CE 72331 Second Party: HREC

Description: Professional Consulting Services

City Clerk's File No. 08-339

Filed with City Council: N/A

Final Publication Date: N/A

Ordinance No. N/A

1. Attached are 2 copies of the above contract.
2. Upon approval, sign each flagged signature page where indicated.
3. When executed, please return all contracts to the person indicated below.
4. **Do not date the contract.**
5. For special instructions and communications, please use the lower portion of this route sheet.

Assistant City Attorney:

4/4/08  
IN

4/4/08  
OUT

[Signature]  
INITIALS

Mayor:

04-10-08  
IN

04-15-08  
OUT

INITIALS

Clerk:

4-15  
IN

4-15-08  
OUT

[Signature]  
INITIALS

Manager of Finance:

4-16-08  
IN

4-25-08  
OUT

CS  
INITIALS

Auditor:

042806  
IN

08/4/08  
OUT

[Signature]  
INITIALS

Return to:

Brenda Hageman

Airport Legal Services  
Airport Office Building, Room 9810  
8500 Peña Boulevard  
Denver, CO 80249

DATE

Received from Auditor

INITIALS

**311**

for City Services  
Denver gets it done!

**POSTED**

# CITY AND COUNTY OF DENVER

## CONTRACT APPROVAL AND PREPARATION REQUEST

<b>To:</b>	Mayor / City Attorney	<b>Contract Administration Officer:</b> Christy McWilliams
<b>Attention:</b>		
<b>Date:</b>	December 24, 2007	<b>Phone #:</b> 303-342-2153
<b>Initiating Authority:</b> AVIATION	<b>Division:</b> Executive Office	
<b>Agency Contact Familiar with this Contract:</b> Cheryl Cohen-Vader		<b>Phone:</b> 303-342-2211

1. If Contractor was not selected by lowest competitive bid, cite reasons:
2. City Council approval (is ☐) (is not ☒) required prior to entering this contract.
3. An ASPEN 15 Form has been forwarded to Budget and Management ☐.

4. Contractor Name and Address T & C Asset Management, LLC DbA HREC Development Resources 6400 S. Fiddler's Green Circle Suite 1730 Greenwood Village, CO 80111-4961	5. Contract Control Number: CE 72331 6. Type of contract: <input checked="" type="checkbox"/> Exp. <input type="checkbox"/> Rev. <input checked="" type="checkbox"/> Orig. <input type="checkbox"/> Amend. 7. Type of Entity: Colorado Limited Liability Company 8. IRS / SSN #: 9. Project/Grant ID + Name: 10. Ordinance: , series 11. Contract Term (MM/DD/YY): 10/15/07 to 365 Days
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12. Total amount included in this contract request: \$250,000.00 MR7/RF

13. If amendment, previous total: \$ | 14. Total with amendments: \$250,000.00 MR7/RF

15. If multiple expenditure authorities are involved, name the authorities:

Fund 73130	Org. 6013000	Acct. 600400	Amt. \$250,000.00 <u>MR7/RF</u>	Bus. Unit PLANE
Fund	Org.	Acct.	Amt.	Bus. Unit

17. Describe the project in general terms: VENDOR ID# 0000046696: PROFESSIONAL CONSULTING SERVICES: CE 72331:

The consultant will provide professional consulting services in connection with development and financing of a Terminal Hotel at the Airport.

The term may be extended for up to six months by written notice by mutual agreement.

18. Supplemental Materials – transmit to City Attorney as e-mail attachment or hard copy:

<input type="checkbox"/> ASPEN 15	<input type="checkbox"/> Cert. of Insurance	<input type="checkbox"/> Evidence of Bonding	<input type="checkbox"/> Real Estate Desc.
<input type="checkbox"/> RFP	<input type="checkbox"/> RFQ	<input type="checkbox"/> Scope of Work	<input type="checkbox"/> Other:

<b>APPROVALS:</b>  Add agencies as needed: e.g.: Asset Mgt. Public Office Bldgs. Council on Disabled Career Service Authority	Dept./Agency Head: Cheryl Cohen-Vader <u>[Signature]</u> Budget and Mgt.: Renee Franks <u>[Signature]</u> Risk Mgt.: Kate Tremblay <u>[Signature]</u> Mayor's Office: <u>[Signature]</u> Other Authority: Other Authority: Other Authority: Other Authority: Other Authority:	Date: <u>12-27-07</u> Date: <u>1/8/08</u> Date: <u>1-10-08</u> Date: <u>4-15-08</u> Date: Date: Date: Date: Date:
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I hereby certify that the articles or services requested herein are necessary for the operation of this agency, are not available within existing resources, are properly chargeable to the accounts detailed in the attached ASPEN 15 and the quarterly allotments on file with the auditor in respect to which funds have been pre-encumbered, and that this proposed undertaking is in conformity with the Mayor's policy.

 Initiating Authority: _____ Date: <u>12/24/07</u>	 City Attorney _____ Date: <u>4/4/08</u>
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Form: adm42 rev. 12/17/03

CITY CLERK  
OFFICIAL COPY

08-339

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT the ("Agreement"), is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), Party of the First Part, and T & C Asset Management, LLC, a Colorado limited liability company, d/b/a **HREC Development Resources**, authorized to do business in the State of Colorado, hereinafter referred to as (the "**Consultant**"), Party of the Second Part:

### WITNESSETH

**WHEREAS**, the City owns, operates and maintains Denver International Airport (the "**Airport**"); and

**WHEREAS**, the City desires a public financing transaction for and development of a Terminal Hotel at the Airport (the Project) and as more fully set forth herein; and

**WHEREAS**, the City desires to obtain professional consulting Services (hereinafter defined) in connection with a public financing transaction for and development of a Terminal Hotel at the Airport; and

**WHEREAS**, the Consultant is ready, willing and able to provide such Services subject to the conditions hereinafter set out;

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

#### 1. LINE OF AUTHORITY:

Any approval, authorization consent, or other action required or permitted to be given or taken under this Agreement shall be given or taken by one or more of the authorized representatives of the City or the Consultant, as the case may be (each such person appointed from time to time, an "**Authorized Representative**")

**A. City.** The City's Manager of Aviation (hereinafter referred to as the "**Manager**") hereby authorizes and directs all work be performed under this Agreement. Until otherwise notified by the Manager, the Chief Deputy Manager of Aviation, or anyone so acting in that capacity (hereinafter referred to as the "**Deputy Manager**"), is designated as the Authorized Representative of the Manager for the purpose of administering, coordinating and approving the work performed by the Consultant under this Agreement, except for those approvals which this Agreement specifically states require the Manager's approval. Consultant shall submit its reports, memoranda, correspondence and submittals to the Deputy Manager and any other persons or committees designated by the Deputy Manager. These submittals shall be made in accordance with the terms of this Agreement and the Deputy Manager's directions.

**B. Consultant.** For purposes of this Agreement, the Authorized Representative of Consultant shall be J. Mark Tobin.

**C. Replacement or Additions; Authority.** City or Consultant may, from time to time, designate other or replacement Authorized Representatives by written notice to the

*[Handwritten signature]*

other party hereto. The written statements and representations of any Authorized Representative of City or Consultant shall be effective upon the party for whom such person is an Authorized Representative.

**2. A. SCOPE OF WORK:** The Consultant agrees that it will, when and as directed in writing with a notice to proceed by the Deputy Manager, promptly undertake to perform the following work for the Project ("Services"):

(i) assist with development of the project timetable; (ii) assist in finalizing in-house pro formas (hotel operating projections) and construction budgets; (iii) assist in developing preliminary transaction cash flow statements; (iv) assist in preparing documents for any Requests For Proposal that may be necessary; (v) participate in the selection process for a Hotel Operator, Program Manager/Development Manager or Development entity; (vi) assist in negotiations of development agreements and operating agreements; (vii) participate in public and private working sessions with the City; (viii) assist in the process to select an Underwriter; (ix) assist in developing and participating in a Public Outreach Program regarding "How and why" the City is pursuing a hotel development; (x) assist in selection of a Market Consultant for any required market studies; (xi) assist with initial pre-marketing to rating agencies and insurers; (xii) assist with initial pre-marketing to potential investors; (xiii) assist the City with drafting and distributing draft credit packages to working group(s) for rating agencies and insurers; (xiv) assist with site visits; (xv) assist with presentations and other meetings with rating agencies and/or insurers; (xvi) assist in meetings with potential investors; (xvii) participate in, as requested, preparing materials and presentations for stakeholder reviews, public reviews and participate in any related meetings; (xviii) participate in, as requested, discussions/meetings regarding architectural issues, parking, site review, other related activities to the project; and (xix) other coordination activities related to these services as requested by the City.

## **B. OTHER SELECTED DEFINITIONS:**

In addition to words and phrases defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"**Project**", means the Terminal Hotel and all of those areas and facilities normally considered necessary and/or required for a real estate asset and operating business generally described as an "Airport Hotel" and shall include, but shall not necessarily be limited to, guest rooms and suites, interior and exterior public space, meeting space, pre-function areas, back-of-the-house areas, surface and structured parking, support and administrative areas, as well as all interior and exterior vehicular and pedestrian circulation, facilities and other areas.

**3. COMPENSATION AND PAYMENT:** City agrees to pay to Consultant, and the Consultant agrees to accept as compensation for its costs incurred and services rendered under this Agreement, compensation based on the following rates and Consultant's monthly invoices.

A. **Hourly Billing Rate:** Consultant shall be paid a fee for its services rendered hereunder, at the hourly billing rate for the classification of the person performing such services, as follows ("**Hourly Fee**"):

<u>Position</u>	<u>Hourly Billing Rate</u>
Principal Associate	\$325.00
Senior Associate	To be determined
Associate	To be determined

B. **Expenses:** The Consultant shall be reimbursed for expenses incurred in connection with its work under this Agreement and properly invoiced, in accordance with the following schedule ("**Reimbursable Expenses**"):

Long Distance Telephone Charges	at cost
Reproduction, postage and courier service (when necessary)	at cost
Computer service	at cost, up to a maximum of \$5,000/year
Subconsultants	at cost
Parking	at cost
Other expenses related to the Consultant's services which have the Deputy Manager's prior written approval	at cost

Travel expenses shall be reimbursed, at cost, for travel approved by the Deputy Manager, as follows:

- (1) All reimbursable travel shall have received prior written approval of the Deputy Manager or her authorized representative.
- (2) Vehicle rental costs will be allowed only if it can be demonstrated that such rental costs afforded the most economical travel method available, taking into consideration the element of time. Use of such vehicle for personal travel shall not be included.
- (3) No reimbursement shall be approved for air fare costs greater than the most economical rate available to the traveler at the time of his or her trip. Hourly billing rates for the traveler shall not be billed for any period of time for which the trip was extended for personal convenience.
- (4) Meals for travelers shall be limited to \$42.00 per day per person.
- (5) Sleeping accommodation costs shall be limited to a reasonable amount, taking into account costs of alternate accommodations in the location and other relevant factors.



(6) Personal expenses such as personal telephone expenses and non business entertainment shall not be included.

Any cost not listed in or incurred in accordance with this Section as a Reimbursable Expense, shall be presumed to be included in the Consultant's Hourly Billing Rate and therefore not separately reimbursable.

### C. Invoicing:

Payments shall be made to the Consultant based upon City audited and approved monthly invoices submitted by the Consultant, based on the Consultant's monthly invoices for services rendered hereunder, which invoices will be based on the Hourly Billing Rates specified herein. All invoices submitted for payment shall include the following items:

(1) Status reports identifying the progress of all work involved and pertinent data relative to the scope of work performed under each Task Order during the period covered by the invoice.

(2) Adequate documentation to support each invoice, including the following:

(i) Detail by staff person for hours invoiced, indicating the individual's classification and billing rate and how the hours were spent. Individual salaries need not be submitted. Detailed billing worksheets shall only be required to be provided upon request of the City.

(iii) Copies of receipts for all reimbursable expenses.

(iiii) Adequate documentation from subconsultants, in accordance with this section.

(3) The signature of an officer of Consultant's organization, certifying that the invoice has been examined and has been found to be correct.

(4) Amounts invoiced shall reflect and summarize the fee structure incorporated into this Agreement. The cost of preparing and submitting invoices shall not be billed.

(5) Payments will be made to Consultant within a reasonable time after City has received complete invoices from Consultant and as required by law.

(6) City reserves the right to require such additional documentation as it deems appropriate to support the monthly statements of Consultant.

(7) City reserves the right to reject and not pay any invoice or part thereof where Manager reasonably determines that the amount invoiced to date exceeds the amount which should be paid, based upon his determination of the work which has been completed. City, however, shall pay any undisputed items contained in the invoice.

4. **MAXIMUM CONTRACT LIABILITY:** Any other provisions of this Agreement notwithstanding, in no event shall the City be liable for Hourly Fees and Reimbursable Expenses under this Agreement for any amount in excess Two Hundred Fifty Thousand Dollars (\$250,000).

5. **CONTRACT FUNDING:** All Hourly Fees and Reimbursable Expenses under this Agreement shall be paid exclusively from the Airport System Capital Fund. The City's obligation to make payment of Hourly Fees under this Agreement is limited to those funds encumbered for the services and costs for this Agreement. The City shall have no obligation to make any future encumbrance or appropriation to said fund.

6. **CONTRACT TERM:** The term of this Agreement shall commence October 15, 2007 and shall terminate on the 365<sup>th</sup> day thereafter, or such earlier termination as permitted under Section 20 hereof (the "**Term**"); provided, the Agreement may be extended for up to six (6) months by written notice from Manager to Consultant for the completion of previously authorized Services; and provided further, Consultant shall receive Hourly Fees and Reimbursable Expenses in accordance with **Section 3** hereof.

7. **OWNERSHIP OF WORK PRODUCT:** It is understood and agreed that with respect to the Services provided hereunder, all documents, drawings, reports, and other documents submitted to the City by the Consultant shall become and remain the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit; provided, the City has paid Consultant for all Services rendered to the date of termination as provided herein..

8. **COORDINATION AND LIAISON:** The Consultant shall fully coordinate all of its Services with consultants, contractors or other business entities performing work which interfaces with or is affected in any way by such Services, and with any interested City or other governmental agency.

9. **CONFLICT OF INTEREST:** The Consultant agrees that it and its subsidiaries, affiliates, subconsultants, principals or employees, will not engage in any transaction, activity or conduct which would result in a conflict of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or Services of the Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may immediately terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice describing the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to the City.

10. **INDEMNIFICATION:** The Consultant agrees to release, indemnify, save harmless and defend the City, its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever in any way resulting from or arising out of, directly or indirectly, the performance of the Services by Consultant in connection herewith, including acts and omissions of the Consultant's officers, employees, representatives, suppliers, invitees, contractors and agents; provided that the Consultant need not release, indemnify or save harmless the City, its officers, agents and

employees from damages resulting from the willful act or negligence of the City's officers, agents and employees.

**11. STATUS OF CONSULTANT:** It is understood and agreed by and between the parties that the status of the Consultant shall be that of an independent contractor providing professional or technical services, and it is not intended nor shall it be construed that the Consultant, its employees or volunteers are agents, employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

**12. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

**13. INSURANCE:** The Consultant shall, at its sole cost and expense, procure and maintain through the Term of this Agreement the following insurance:

**A. Commercial General Liability Insurance.** A commercial general liability insurance policy, in form and with a company acceptable to and approved by the manager, covering all of the consultant's operations hereunder with limits of not less than \$1,000,000 for a single occurrence and with \$1,000,000 general aggregate coverage. Coverage shall be at least as broad as insurance services office (ISO) standard form cg 0001 10/93. In addition, such insurance must be endorsed so that defense cost must be included for city as an additional insured and shall be outside the limits of insurance.

**B. Business Automobile Liability Insurance.** A business automobile liability insurance policy protecting the Consultant from claims for damages for bodily injury, including wrongful death, as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned or non-owned automobiles, including rented automobiles. The minimum amount of insurance required is a combined single limit of \$1,000,000. Coverage shall be at least as broad as Insurance Services Office Form CA 0001 6/92.

**C. Worker's Compensation Insurance.** The Consultant shall maintain adequate worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Colorado State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Colorado, insuring the payment of compensation to all of its employees.

**D. General Insurance Requirements.** On the commercial general liability and business automobile liability insurance, the City, its officers, officials and employees shall be listed as an additional insured with coverage at least as broad as Insurance Services Office Form CG 2010 Form B. In addition, a waiver of subrogation shall be attached to the policies. The Consultant shall include as insured under its policies all subcontractors, if any, or shall furnish separate certificates and endorsements for each subcontractor, if any. All coverage for any subcontractors shall be subject to all of the requirements

stated herein. All insurance companies must be rated at least a VIII by A.M. Best Company. Certificates evidencing the existence of insurance, all in such form as the Manager may require, shall be delivered to the Manager, and to the City's Risk Manager at the Airport, at least 10 days before any work begins pursuant to this Agreement. Each certificate of insurance shall contain a valid provision or endorsement that the policy may not be canceled or terminated without giving the Manager and the City's Risk Manager at least 30 days notice thereof. A renewal policy shall be delivered to the City at least 15 days prior to a policy's expiration date during the term of this Agreement.

**14. SUBCONSULTANTS:** While the Consultant may retain, hire and contract with one or more third party subconsultants, no final agreement with any subconsultant shall be entered into without the prior written consent of the Manager. Request for such approval must be made in writing and include a description of the nature and extent of the services to be provided by the subconsultant, the name, address, and professional experience of the subconsultant, and any other information requested by the Manager. Any final agreement with an approved subconsultant shall waive any and all right to make any claim of payment against any City arising out of the performance of the services by the subconsultant. Because the Consultant's represented professional qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed subconsultant deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of subconsultants.

**15. ASSIGNMENT:** The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part, without first obtaining the prior written consent of the Manager. Any attempt by the Consultant to assign, transfer, or convey its rights hereunder without such prior written consent of the Manager shall not be binding upon the City, and shall confer no rights upon any third Person. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

**16. CITY REVIEW OF PROCEDURES:** The Consultant agrees that, upon request of the Manager, at any time during the Term of this Agreement and for three (3) years thereafter, it will provide full disclosure to the City and make available for inspection all of its records associated with work performed under this Agreement and make itself available for personal interview by the City, at City's expense, for purposes of verifying the Consultant's fees and expenses charged hereunder.

**17. INSPECTION OF RECORDS:** In connection with any Services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City, the Federal Aviation Administration, the Economic Development Administration, the Comptroller General of the United States, and any other duly authorized representatives shall have access to any books, documents, papers and records of the Consultant which relate to the work paid for in whole or in part with funds received from a specific grant program for the purpose of making audits, examinations, excerpts and transcriptions. The City shall also have the right to audit, examine and copy the Consultant's records, which are related to Services performed under this Agreement without regard to whether the Services were paid for in whole or in part with federal funds or were otherwise related to a federal grant program.

**18. FEDERAL PROVISIONS:** 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. The provisions of the attached **Appendices 1, 3 and 10** are incorporated herein by reference.

**19. REQUIREMENTS OF WORK:** Consultant shall coordinate its work with the operational requirements of the Airport, and all movement of its personnel and equipment at the Airport shall be subject to the regulations and restrictions established by the City.

**20. TERMINATION:** It is further understood and agreed by Consultant that the City may, with or without cause, cancel and terminate this Agreement by giving written notice to Consultant, which notice shall state the effective date of such cancellation and termination. If the Manager elects to cancel or terminate this Agreement, immediately upon receipt of the notice, the Consultant shall cease all further work, take all reasonable and necessary steps or procedures to curtail and hold additional cost incurred to a minimum, and commence an orderly termination of the Agreement. If the City terminates this Agreement, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drawings estimates, studies, reports or other documents it has completed or partially completed under this Agreement, together with any unused materials which have been paid for by the City, and these documents and materials shall be the property of the City; provided, that the Consultant may keep a copy of such documents and other materials to the extent they have been incorporated into the Consultant's working papers.

**21. NOTICES:** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and all other required notices hereunder shall be made as follows:

by the Consultant to:

Manager of Aviation  
Department of Aviation  
Airport Office Building, 9<sup>th</sup> Floor  
8500 Peña Boulevard  
Denver, CO 80249-6340

with a copy to:

Chief Deputy Manager  
Department of Aviation  
8500 Peña Boulevard  
Denver, CO 80249-6340

and by the City to:

HREC Development Resources  
6400 S. Fiddler's Green Circle, suite 1730  
Greenwood Village, CO 80111-4961  
Attn: J. Mark Tobin



Said notices shall be delivered personally during normal business hours to the appropriate office, above, or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

**22. COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS:**

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. Consultant further agrees that it will not utilize any protected patent, trademark or copyright in performance of its work unless Consultant has obtained proper permission and all releases and other necessary documents. If Consultant specifies any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks, and copyrights in the construction drawings or technical specifications.

Consultant agrees to indemnify and save harmless the City, its officers, agents and employees, pursuant to the paragraph herein entitled "Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever to the extent caused by the Consultant's performance of its Services under this Agreement which infringe upon any patent, trademark or copyright protected by law.

**23. TAXES AND LICENSES:** Consultant shall promptly pay when they are due all taxes, excises, license fees and permit fees of whatever nature applicable to its Services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform such Services. Consultant shall furnish the Deputy Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. Consultant shall promptly pay, when due, all bills, debts and obligations it incurs performing its Services under this Agreement and shall not authorize any lien, mortgage, judgment or execution to be filed by a third party against land, facilities or improvements owned by City.

**24. NONDISCRIMINATION:** In connection with the performance of work under this Agreement, Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

**25. NO WAIVER OF RIGHTS.** No waiver, amendment, release or modification of any provision of this Agreement shall be established by conduct, custom or course of dealing, and shall not be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be continuing or future waiver. No delay or omission in the exercise of any right, power or remedy accruing to either party upon any breach by the other party under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring.

**26. COMPLIANCE WITH LAWS AND REGULATIONS:** Consultant shall not use or permit the Airport to be used by its employees, agents, representatives, subconsultants or invitees for any purpose prohibited by the laws of the United States or the State of Colorado or

the Charter or Ordinances of the City and County of Denver, and shall use the roadways and other areas of the Airport in accordance with all general rules and regulations adopted by the City for the government and operation of the Airport, either promulgated by the City on its own initiative or by or in compliance with regular interstate flights to and from the Airport. In addition, all work which Consultant performs under this Agreement shall comply with all applicable laws, rules and regulations of the United States, the State of Colorado and the Charter and Ordinances of the City and County of Denver.

**27. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Consultant, its officers, agents and employees, shall cooperate and comply with the provisions of Executive Order No. 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.

**28. BOND ORDINANCES:** This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and the Consultant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code, as amended. In particular, Consultant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

**29. ADMINISTRATIVE HEARING:** Disputes arising between the parties hereto under or related to this Agreement or the Services which are the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

**30. PROFESSIONAL RESPONSIBILITY:** The Consultant shall perform all work under this Agreement in accordance with standards of care, skill and diligence provided by competent professionals who perform work of a similar nature to the work contemplated by this Agreement.

### **31. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

a. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Consultant is liable for any violations as provided in the Certification Statute.

b. The Consultant certifies that, at the time of the execution of the Agreement, the Consultant does not knowingly employ or contract with an illegal alien and that it has participated or attempted to participate in the basic pilot program ("Basic Pilot Employment

Verification Program", "Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States.

c. The Consultant shall also comply with the following provisions:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed or attempted to confirm the employment of all employees who are newly hired for employment in the United States through participation in the BPP, and that if it is not accepted into the BPP prior to entering into the Agreement, it shall apply to participate in the BPP every three months until it is accepted into the BPP or the Agreement has been terminated, whichever occurs first.

(4) It is prohibited from using BPP procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days. The Consultant will also then terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

**32. SURVIVAL PROVISIONS:** Any provisions of this Agreement requiring observance or performance subsequent to its termination shall continue in force and effect following termination.

**33. EXECUTION OF CONTRACT:** This Agreement is expressly subject to and shall not be or become effective or binding on either party until execution by all signatories of each party.

**34. HEADINGS:** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**35. SEVERABILITY:** In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

**36. ENTIRE AGREEMENT:** The provisions contained herein constitute the entire Agreement and all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. No changes or modifications



to this Agreement, unless the right to make them has been expressly reserved by the City herein, shall be valid unless executed in writing by all the parties with the same formality as this Agreement.

**37. AGREEMENT MADE IN COLORADO:** This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

**38. FORCE MAJEURE:** Notwithstanding any other provision in this Agreement, neither party shall be liable or held responsible for any failure to perform or delays in performing its obligations under this Agreement which result from circumstances or causes beyond that party's power to control, including, without limitation, fire or casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

**39. CONSTRUCTION:** (i) All references in this Agreement to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement; (ii) the words "herein", "hereof", "hereto", "hereby" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (iii) all defined terms wherever set forth shall include the plural as well as the singular; (v) unless this Agreement expressly or necessarily requires otherwise (i) any time period measured in "days" means consecutive calendar days, except that the expiration of any time period measured in days that expires on a Saturday, Sunday or legal holiday automatically will be extended to the next day so that it is not a Saturday, Sunday or legal holiday observed by the City and County of Denver (collectively "Business Day").

**40. Exhibits, Appendices 1, 3, and 10,** attached hereto are an integral part of this Agreement.

[END OF PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

ATTEST:

By Stephanie Y. O'Malley  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver



CITY AND COUNTY OF DENVER

Mayor

APPROVED AS TO FORM:  
DAVID R. FINE, Attorney  
for the City and County of Denver

By [Signature]  
Assistant City Attorney

RECOMMENDED AND APPROVED:

By [Signature]  
Manager of Aviation

By [Signature]  
Chief Deputy Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By: Claudio J. Puntillo  
Manager of Finance  
Contract Control No. CE 72331

By: [Signature]  
Auditor

PARTY OF THE FIRST PART

T & C Asset Management, LLC

By [Signature]  
J. Mark Tobin

Title MANAGING MEMBER

PARTY OF THE SECOND PART

[Signature]

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

During the term 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 shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, 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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall 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 (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### APPENDIX NO. 3

#### NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is to provide, or is in the form of personal property or real property or an interest herein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name or set of initials.

## APPENDIX NO. 10

### DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

Source: 49 CFR 23.42 and Advisory Circular 150/1500-15, Appendix 10.

49 CFR 23.5 defines a DOT-assisted contract as "any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee." "Contractor" means ... "and includes lessees." The City is the "recipient."