

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the date set forth on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **PROPHET BRAND STRATEGY, INC.** (Prophet) a corporation organized under the laws of the State of California and authorized to do business in Colorado ("Consultant").

### **WITNESSETH:**

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

**WHEREAS**, the City desires to obtain professional services to assist its Department of Aviation, including but not limited to services related to developing brand growth strategy, strategic advising, revenue development consulting; and

**WHEREAS**, the Consultant is qualified and ready, willing, and able to perform the services as set forth in this Agreement;

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

#### **1. LINE OF AUTHORITY:**

A. The City's Manager of Aviation, or his or her designee or successor in function (hereinafter referred to as the "Manager") authorizes and directs all work performed under this Agreement. Until otherwise notified by the Manager, the City's Deputy Manager of Aviation – Commercial ("Deputy Manager") is designated as the authorized representatives of the Manager through whom services performed under this Agreement shall be directed and coordinated. The Deputy Manager may designate the Project Manager, if applicable, under this Agreement. Administrative reports, memoranda, correspondence and other submittals required of the Consultant shall be processed in accordance with the Deputy Manager's directions.

#### **2. SCOPE OF WORK:**

A. General: The Consultant shall, upon receipt of a written Notice to Proceed from the Deputy Manager, commence the Work as authorized by the City and shall furnish all of the technical, administrative, professional and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform the services, complete the Work and produce all of the deliverables described and set forth in this Agreement, including the attached **Exhibit A**, "Scope of Work" and all of the other exhibits, appendices and attachments to this Agreement.

The Consultant's Scope of Work, as authorized by the City, is referred to in this Agreement as the "Scope of Work" or "Work."

B. Professional Responsibility; Standard and Remedies:

1. Consultant's Performance: The Consultant shall faithfully perform the Work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by competent professionals who perform work of a similar nature to the Work described in this Agreement. Consultant shall provide to the City in a timely manner all designs, documents, submittals and services necessary to achieve completion of the Work in accordance with Milestone Dates established for authorized Work. All designs, documents, submittals, proposals and services provided by Consultant shall be:

- a) Fully coordinated and integrated with related work being performed by the Consultant's subcontractors, the City and the City's consultants, and all of their respective suppliers and subcontractors of any tier; and
- b) Checked for compliance with applicable laws, ordinances, codes, rules, regulations and current industry standards applicable to the Work. Codes and laws are often subject to differing interpretations. Consultant will use due diligence to ascertain interpretations which will be acceptable to the City and relevant regulatory authorities.

2. Acts and Omissions: The Consultant shall be liable to the City for acts and omissions of Consultant's employees, subcontractors, agents and any other party with whom the Consultant contracts to perform any portion of the Work, including any design elements of any authorized Work.

3. City's Remedies: In the event Consultant fails to comply with any provisions of Sections 1 or 2, above, Consultant shall be liable to the City for all costs of correcting the Work, without additional compensation, including but not limited to:

- a) All costs of correcting and replacing any affected design documents, including reproducible drawings;
- b) All removal and replacement costs of any improvements or other work installed or performed pursuant to and in accordance with design documents containing negligent errors or omissions; and
- c) Additional costs incurred by the City or its other consultants or Consultants, if any, arising out of such defective Work.

These remedies are in addition to, and do not limit the provisions and requirements of Section 14- Insurance, and Section 15 – Indemnification, below.

C. Diligence: The Consultant acknowledges that time is of the essence in the performance of its services under this agreement and that the City of Denver may suffer damages if the Project is delayed as a result of the Consultant's failure to provide its services in a timely and diligent manner. Consultant shall perform the Work described herein in a timely manner and as directed by the Deputy Manager or his or her authorized representatives.

### 3. COMPENSATION AND PAYMENT:

#### A. Payment Schedule / Invoicing:

1. Fees. Subject to the Maximum Contract Amount set forth at, Consultant's fee shall be paid based on the rates stated in the attached **Exhibit B**.
2. Scheduling, Progress Reports and Invoices: Payments shall be made to Consultant based upon phased invoices and receipts submitted by Consultant, which invoices have been approved by City, and subject to the maximum contract liability. The Consultant agrees that City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.*

The City reserves the right to reject and not pay any invoice or part thereof where the Manager determines that the amount invoiced to date exceeds the amount which should be paid based upon its determination of the Work which has been performed. The City, however, shall pay any undisputed items contained in the invoice. Disputes concerning payments under the provisions of this contract shall be resolved by administrative hearing pursuant to the procedures of Section 5-17, Revised Municipal Code.

Invoices shall be submitted in accordance with the phases and rates set forth on **Exhibit B**, and shall include sufficient documentation to support the invoice and the following where applicable:

- (a) A brief status report which describes the progress of the Work and a summary of the authorized Work performed during the period covered by the invoice.
- (b) A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by the Consultant and shall be available for examination by the City, at City request.
- (c) The amounts shown on the invoices shall comply with and clearly reference the relevant authorization of Work by the Deputy Manager, the hourly rate where applicable, and allowable reimbursable expenses.

(d) The Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.

(e) The signature of an officer of the Consultant, along with such officer's certification that it has examined the invoice and has found it to be correct, shall be included on all invoices

3. Expenses: Subject to receipt and approval by the City of an acceptable invoices and supporting documentation from the Consultant, Research Fees and out-of-pocket expenses will be billed as incurred or monthly.

All reimbursable travel shall have the prior written approval of the Deputy Manager, and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Sleeping accommodation costs are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. Reimbursement for meals and incidentals is limited to the per diem allowed by the City's fiscal accountability rules. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for personal convenience.

All expenses of any kind are subject to the maximum contract liability.

**B. Prompt Payment Ordinance:** The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with Denver's Prompt Payment Ordinance, Section 20-107 *et seq.* of the Denver Revised Municipal Code.

**C. Additional Services:** The Consultant may also perform services, hereinafter referred to as "Additional Services," which relate to the subject matter of this Agreement, but which the Deputy Manager determines to be not described in the Scope of Work or in excess of the requirements of the Scope of Work. The Consultant shall be compensated for such Additional Services only if the services and the amount of fees and reimbursable expenses for the services have been authorized in writing in advance by the Deputy Manager, in accordance with the billing rates set out in Exhibit B. The total amount of fees and reimbursable expense costs for Additional Services shall not cause this Agreement to exceed the Maximum Contract Liability set forth herein, and in no event shall the approval of Additional Services and the cost of performing them be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability.

#### **4. MAXIMUM CONTRACT AMOUNT; FUNDING:**

A. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed One Million Eight Hundred Thousand (\$1,800,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in *Exhibit A*. Any services performed beyond those in *Exhibit A* or over Maximum Contract Amount are performed at Consultant's risk and without authorization under the Agreement. The Maximum Contract Liability may only be increased by amendment to this Agreement. The Maximum Contract Liability may only be increased by amendment to this Agreement.

B. Payment under this Agreement shall be paid from the City's Airport System Capital Improvement and Replacement Fund and/or from the City's Airport System Operation and Maintenance Fund. The City has no obligation to make payments from any other source. The City's payment obligation extends only to funds appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. TERM:**

The term of this Agreement shall commence on January 1, 2014, and shall terminate on December 31, 2014, unless terminated earlier in accordance with this Agreement.

**6. SUBCONTRACTORS:**

A. Although the Consultant may retain, hire and contract with outside subcontractors, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Deputy Manager or his authorized representative. Requests for such approval must be made in writing and 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 Deputy Manager. 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 the contract.

B. 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 outside subcontractor deemed by him, in his sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the Deputy Manager shall have the right to limit the number of outside subcontractors or to limit the percentage of Work to be performed by them, all in his sole and absolute discretion.

C. The Consultant shall not retain any subcontractor to perform work under this Agreement if the Consultant is aware, after a reasonable written inquiry has been made, that the subcontractor is connected with the sale or promotion of equipment or material which is or may be used on work related to or following on from this Agreement, or that any other conflict of interest exists.

## **7. PERSONNEL ASSIGNMENTS:**

A. The Consultant shall assign a lead Representative Project Manager to this Project that has relevant experience and knowledge acceptable to the City. This individual shall be the contact person in dealing with the City's Project Manager on matters concerning this Project and shall have the full authority to act for the Consultant's organization and at the direction of the Deputy Manager of Aviation or his or her designated representative. Consultant's designated Project Manager shall remain assigned on this contract during the entire contract term, while in the employ of the Consultant, or, until such time that his performance is deemed unsatisfactory by the City and a formal written request is submitted which requests the removal of the Consultant's Project Manager.

B. The Consultant may choose to replace a Representative Project Manager with another qualified individual(s).

C. The Consultant may submit and the City will consider a request for reassignment of a Representative Project Manager, should the Consultant deem it to be in the best interest of the City, the best interest of the Consultant's organization or in the best interest of the Consultant's Project Manager.

D. If the City allows the removal and replacement of the Representative Project Manager, the replacement Representative Project Manager must have, at least, similar or equal experience and qualifications to that of the original Representative Project Manager. The replacement Representative Project Manager's assignment is subject to the approval of the Deputy Manager of Aviation

E. All key professional personnel identified by the Consultant will be assigned by the Consultant or subcontractors to perform work under this Scope of Work. The Deputy Manager must approve additional personnel in writing. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Scope of Work and that the Consultant's and the subcontractor's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

F. If the Consultant decides to replace any of its key professional personnel, it shall notify the Deputy Manager in writing of the changes it desires to make. No such replacement shall be made until the replacement is approved in writing by the Deputy Manager, which approval shall not be unreasonably withheld. The Deputy Manager shall respond to the

Consultant's written notice regarding replacement of key professional personnel within fifteen days after the Deputy Manager receives the list of key professional personnel, which the Consultant desires to replace. If the Deputy Manager or his designated representative does not respond within that time, the listed personnel shall be deemed to be approved.

G. If, during the term of this Agreement, the Deputy Manager determines that the performance of approved key personnel is not acceptable, he shall notify the Consultant, and he may give the Consultant notice of the period of time, which the Deputy Manager considers reasonable to correct such performance. If the Deputy Manager notifies the Consultant that certain of its key personnel should be reassigned, the Consultant will use its best efforts to obtain adequate substitute personnel within ten days from the date of the Deputy Manager's notice.

#### **8. STATUS OF CONSULTANT:**

It is agreed and understood by and between the parties hereto that the status of the Consultant shall be that of an independent Consultant retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1 (E)(x) of the Charter of the City and County of Denver, and it is not intended, nor shall it be construed, that the Consultant or its personnel are employees or officers of the City under Chapter 18 of the Revised Municipal Code for any purpose whatsoever.

#### **9. NO AUTHORITY TO BIND CITY TO CONTRACTS:**

The 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 Charter and Ordinance.

#### **10. ASSIGNMENT:**

The Consultant shall not assign, pledge or transfer its duties and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Manager. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

#### **11. CONFLICT OF INTEREST:**

The Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest 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 terminate this Agreement if such a conflict exists, after it has given the Consultant written notice which describes such conflict. The Consultant shall have thirty 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.

## **12. NO DISCRIMINATION IN EMPLOYMENT:**

In connection with the performance of work under this Agreement, the Consultant agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment 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 the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

## **13. PROMPT PAY**

The Consultant is subject to D.R.M.C. Section 20-112 wherein the Consultant is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (Section 20-107 through 20-118).

## **14. INSURANCE:**

A. The Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit C**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed certificates of insurance (ACORD form or equivalent approved by the City) which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf, and must be submitted to the City at the time the Consultant signs this Agreement.

B. All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit C**. All sub-contractors' certificates and endorsements must be received and approved by the Consultant before work commences.



C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Business & Technologies, Airport Office Building, Room 8810, 8500 Pena Boulevard, Denver, Colorado 80249. The City project/Agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

D. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

E. The Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required form of coverage during all periods in which coverage is in effect.

F. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

G. 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.

## **15. DEFENSE AND INDEMNIFICATION:**

A. To the fullest extent permitted by law, the Consultant hereby agrees to defend, indemnify, reimburse and hold harmless 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 that are due to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner to indemnify the City.

B. Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

C. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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. Such payments on

behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The 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.

**16. COORDINATION OF SERVICES:**

The Consultant agrees to perform its work under this Agreement in accordance with the operational requirements of DIA to the extent made known to the Consultant, and all work and movement of personnel or equipment on areas included within the DIA site shall be subject to the regulations and restrictions established by the City or its authorized agents.

**17. COMPLIANCE WITH ALL LAWS AND REGULATIONS:**

All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado, the charter, ordinances and rules and regulations of the City and County of Denver, and all Denver International Airport Rules and Regulations.

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

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

**B.** The Consultant further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Paragraph 16, "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, in any way 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, except in cases where the Consultant's personnel are working under the direction of City personnel and do not have direct knowledge or control of information regarding patents, trademarks, and copyrights and except for infringement otherwise caused solely by the City.

**19. TAXES AND COSTS:**

The Consultant, at its own expense, 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.

**20. OWNERSHIP OF WORK PRODUCT:**

All plans, drawings, reports, other submittals, and other documents prepared specifically for and submitted to the City or its authorized agents by the Consultant shall become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit. The Consultant shall not be liable for any damage which may result from any use of such documents for purposes other than those described in this Agreement.

**21. ADVERTISING AND PUBLIC DISCLOSURES:**

The 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 Manager. Any oral presentation or written materials related to DIA 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. The Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the Consultant's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager, any member or members of City Council, and the Auditor.

**22. COLORADO OPEN RECORDS ACT:**

The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and the 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 the Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

**23. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:**

The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver 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's barring the Consultant and Consultant's agents from City facilities or participating in City operations.

**24. CITY SMOKING POLICY:**

Consultant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Consultant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

**25. EXAMINATION OF RECORDS:**

A. The Consultant agrees that the City's duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Consultant involving this Agreement to audit or review said books, documents, papers and records to assure they are in compliance with the terms and conditions of this Agreement.

B. In connection with any services performed hereunder the Manager of Aviation, the City Auditor and any other authorized official of the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the applicable federal project number.

**26. INFORMATION FURNISHED BY CITY:**

The City will furnish to the Consultant available information concerning DIA and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract. The Consultant assumes no responsibility for the accuracy or completeness of such information.

**27. CITY REVIEW OF PROCEDURES:**

The Consultant agrees that, upon request of the Deputy Manager, at any time during the term of the Agreement or three years thereafter, it will make full disclosure to the City of the means, methods, and procedures used in performance of services hereunder.

## **28. TERMINATION:**

A. The City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant, and with cause on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If the Consultant is discharged before all the services contemplated hereunder have been completed, or if the Consultant's services are for any reason terminated, stopped or discontinued because of the inability of the Consultant to provide service under this Agreement, the Consultant shall be paid only for those services satisfactorily performed in accordance with the specifications and requirements in this Agreement prior to the time of termination.

C. If this Agreement is terminated, 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 drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City.

D. Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of the City the Consultant shall be entitled to reimbursement for the reasonable cost of the Work to the date of termination, including multiplier, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. The Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Contract Amount.

## **29. SURVIVAL OF CERTAIN CONTRACT PROVISIONS:**

The parties understand and agree that all terms and conditions of this Agreement, including any warranty provision, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein.

## **30. NOTICES:**

Notwithstanding any other provision of this Agreement, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Consultant to:                   Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, 9th Floor  
Denver, Colorado 80249-6340

And by City to:                   Prophet Brand Strategy Inc.  
One Bush Street 7th Floor  
San Francisco, CA 94104

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. Either party 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 thereof.

**31.    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 the Consultant, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

**32.    NO THIRD PARTY BENEFICIARIES:**

It is expressly understood and agreed 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 the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that any person other than the City or the Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**33.    GOVERNING LAW; BOND ORDINANCES; VENUE**

A. This Agreement is made under and shall be governed by the law of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the

Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

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

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

**34. 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 Den. Rev. Municipal Code 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.

B. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Consultant also agrees and represents that:

(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 subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Consultant will also then

terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant 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. or the City Auditor under authority of Den. Rev. Mun. Code 20-90.3.

### **35. PARAGRAPH HEADINGS**

The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

### **36. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**

This Agreement consists of Sections 1 through 44 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference (the "Contract Documents"):

Exhibit A	Scope of Services
Exhibit B	Schedule of Rates and Fees
Exhibit C	Certificate of Insurance
Appendix No. 1	Standard Federal Assurances and Nondiscrimination

In the event of an irreconcilable conflict (i) between a provision of Articles 1 through 45 and any of the listed exhibits or attachments or (ii) between provisions of any exhibits or 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 No. 1  
Sections 1 through 44 hereof  
Exhibit A  
Exhibit B  
Exhibit C

### **37. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS**

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a



written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**38. 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.

**39. FORCE MAJEURE:**

Neither party shall 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. Both parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**40. ADMINISTRATIVE HEARING:**

Disputes arising 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.

**41. 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 and 3 are incorporated herein by reference.

**42. SEVERABILITY; ENTIRE AGREEMENT:**

If any part, portion or provision of this Agreement shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having applicable authority, only such part, portion, or provision shall be affected thereby and all other parts, portions and provisions of this Agreement shall remain in full force and effect. The Contract Documents form the entire agreement between the parties and

are fully binding on the parties. No oral representations or other agreements have been made except as specifically stated in the Contract Documents.

**43. PREVAILING WAGE:**

Consultant shall comply with the City's Prevailing Wage Ordinance, Section 20-76 *et seq.* of the Denver Revised Municipal Code ("D.R.M.C."), as such Ordinance applies to Consultant's activities under this Agreement. The Contractor is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C § 20-77.

**44. CITY EXECUTION OF AGREEMENT:**

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by City Council, if so required by law, and fully executed by all signatories of the City and County of Denver.

[End of Agreement; signature pages follow]

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Consultant, 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, creed, color, sex, 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.

#### 7. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The contractor 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. 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.

Contract Control Number: PLANE-201414903-00

Contractor Name: Prophet Brand Strategy Inc.

By: 

Name: Aaron Smith  
(please print)

Title: Partner  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



# Project Roadmap



1-4 Weeks

10-12 Weeks

6-8 Weeks

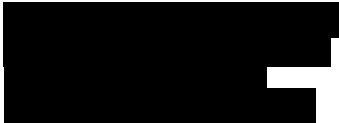
4-5 Weeks

- **IMMERSION & DATA REVIEW**  
Conduct kick-off and immerse in existing strategy, long-term plans, data, etc.
- **CUSTOMER EXAM**  
Develop initial current state "EXAMS" for how travelers experience airport today and where the opportunities are
- **STAKEHOLDER INTERVIEWS & MANAGEMENT APPROACH**  
Conduct interviews with key DEN leader and airport partners to assess current offers, experiences, challenges, etc. & define stakeholder plan
- **COMPETITIVE LANDSCAPE & ANALOGS**
- **Assess best practices across US and global airports and adjacent businesses**
- **HYPOTHESES SESSION**  
Align on research plan, evaluation criteria, traveler needs & quick wins

- **TRAVEL A MILE**  
Digital ethnographies and observational interviews with 30-40 travelers to understand experiences, desires and behaviors, pain points, etc.
- **SEGMENTATION DEV'P**  
Deep dive quantitative research to better understand and identify traveler segments
- **SEGMENT PROFILES**  
Develop target segment profiles based on behaviors, needs, and attitudes
- **SEGMENT & TOUCHPOINT PRIORITIZATION**  
Prioritize traveler segments and key touchpoints based on potential opportunities/impact
- **INITIAL METRICS**  
Identify initial success metrics that gauge segment behavior

- **DEFINE BRAND POSITIONING**  
Conduct creative session to explore / define long-term experience proposition
- **INITIATIVE PLAYSTUDIO<sup>SM</sup>**  
Conduct 1-day session to generate high impact initiatives, experiences, and offers
- **CONCEPT DEVELOPMENT**  
Refine and bring to life highest potential experience concepts
- **EXPERIENCE EVALUATION GROUPS & CONCEPT TEST**  
Consumer feedback sessions (4-5 groups) & quant test to assess and refine concepts
- **CONCEPT BOOTCAMP**  
Conduct work sessions with airport stakeholders to evaluate learnings, and assess feasibility
- **INITIATIVE PRIORITIZATION**  
Narrow concepts based on potential impact, strategic advantage, ROI, etc.

- **BUSINESS CASE**  
Finalize business case rationale for recommended initiatives
- **VALUE PROPOSITIONS**  
Finalize initiative value propositions and key operational requirements
- **METRICS & MEASUREMENT SYSTEMS**  
Identify key metrics, and design overall measurement system and dashboard to monitor performance
- **ACTIVATION PLAN**  
Develop an overall implementation stakeholder engagement plan



# Key Deliverables

Traveler Segmentation & Profiles	Current & Future State Experience (EXAM <sup>SM</sup> )	DEN Brand / Airport Positioning	Set of Experience Initiatives

Prioritization of Experience Concepts		Alignment, Implementation & Activation Plan	Metrics & Measurement Dashboard

**EXHIBIT B  
HOURLY RATES & INVOICING SCHEDULE**

	Hourly Rates
Senior Partner	\$ 710
Partner	\$ 585
Associate Partner	\$ 510
Senior Engagement Manager	\$ 450
Engagement Manager	\$ 400
Senior Associate	\$ 300
Associate	\$ 220

**Invoicing schedule:**

Phase 1 completion: \$448,125.00

Phase 2 completion: \$448,125.00

Phase 3 completion: \$448,125.00

Phase 4 completion: \$448,125.00



Certificate Holder:

CITY AND COUNTY OF DENVER  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201414903 – DEN Growth Strategy**

**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability Coverage**

**Coverage:** COLORADO Workers' Compensation

**Minimum Limits of Liability (In Thousands)**

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

**Any Policy issued under this section must contain, include or provide for the following:**

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.
3. If the Insured is a sole proprietor, they are not required by the State of Colorado to purchase workers compensation coverage.

**Business Automobile Liability Coverage**

**Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)**

**Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000**

**Any Policy issued under this section must contain, include or provide for the following:**

1. Symbol 1, coverage for any auto. If no autos are owned, then the Hired and Non-owned auto liability must be purchased.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.
3. If the Insured does not carry business auto coverage, they must show proof of insurance for limits currently required by the State of Colorado.

**Professional Liability**

**Coverage: Professional Liability**

**Minimum Limits of Liability (In Thousands) Per Claim \$1,000**

**Any Policy issued under this section must contain, include or provide for the following:**

1. Policies written on a claims-made basis must remain in force for three years ERP in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

- 3. Any cancellation notice required herein must be provided by Certified Mail. Coverage must extend, by endorsement or otherwise, to cover the full scope of all environmental services performed under the insured's contract with the City.**

### **III. ADDITIONAL CONDITIONS**

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on these Insurance Requirements shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### **NOTICE OF CANCELLATION**

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.