

FIRST AMENDMENT TO THE AGREEMENT

THIS FIRST AMENDMENT TO THE AGREEMENT (“First Amendment”), is made and entered into as of the date stated on City’s signature page below (the “Effective Date”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (“City”), and **HENSEL PHELPS CONSTRUCTION CO.**, an entity organized under the laws of the State of Delaware and authorized to do business in Colorado (“Contractor”) (collectively “Parties”).

WITNESSETH:

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

WHEREAS, the City and Contractor entered into a written agreement, Contract No. 201843835-00, dated February 14, 2020 (“**Agreement**”) wherein the Contractor agreed to provide scheduled maintenance and scheduled or emergency repair services for the chillers, boilers and associated equipment at DEN; and

WHEREAS, the City has practiced its option to extend the Term of the Agreement for one year pursuant to Article III Section A of the Agreement, and the City reserves its option to extend for an additional year per the Agreement; and

WHEREAS, the City now wishes to add additional funding to the Agreement with this First Amendment; and

WHEREAS, Contractor is willing and able to perform the Work; and

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

1. Article IV, Section A of the Agreement, entitled “Maximum Contract Liability,” is hereby amended and restated as follows:

A. Maximum Contract Liability. Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of **Two Million Seven Hundred Thousand Dollars and Zero Cents (\$2,700,000.00)** (“Maximum Contract Liability”). Contractor will be performing the services on a time and material basis up to the Maximum Contract Amount. Contractor’s fee is based on the time required by its professionals to complete the services.

2. Article VII, Section B, entitled “Small Business Enterprises,” is hereby amended and restated as follows:

B. Minority/Women Business Enterprise.

1. This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (“D.R.M.C.”), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “MWBE Ordinance”); and any Rules and Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“DSBO”) is fifteen percent (15%).

2. Under § 28-68, D.R.M.C., the Contractor has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other contract modifications under § 28-70, D.R.M.C. The Contractor acknowledges that:

(a) Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the MWBE participation goal.

(b) If contract modifications are issued under the Agreement, the Contractor shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.

(c) If amendments or other contract modifications are issued under the contract that include an increase in the scope of work of this Agreement, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be promptly submitted to DSBO for notification purposes.

(d) Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subcontractors are subject to the original goal. The Contractor shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Contractor must also satisfy the requirements under §§ 28-64 and 28-73, D.R.M.C., with regard to changes in scope or participation. The Contractor shall supply to DSBO all required documentation under §§ 28-64, 25-70, and 28-73, D.R.M.C., with

respect to the modified dollar value or work under the contract.

(e) For contracts of one million dollars (\$1,000,000.00) and over, the Contractor is required to comply with § 28-72, D.R.M.C., regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor's invoice.

(f) Termination or substitution of an MWBE subcontractor requires compliance with § 28-73, D.R.M.C.

(g) Failure to comply with these provisions may subject the Contractor to sanctions set forth in § 28-76 of the MWBE Ordinance.

(h) Should any questions arise regarding DSBO requirements, the Contractor should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

3. Article VII, Section F, entitled "Examination of Records," is hereby amended and restated as follows:

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

4. Article VII, Section J, entitled "Prohibition Against Employment Of Illegal Aliens To Perform Work Under this Agreement," is hereby amended and restated as follows:

J. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT

1. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

2. The Contractor certifies that:

(a) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future..

(b) It will participate in the E-Verify Program, as defined in § 817.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(c) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

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

(e) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(f) It will comply with a 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 D.R.M.C. 20-90.3.

3. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

5. Except as modified by this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect.

6. This First Amendment to the Agreement shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver. This First Amendment may be executed in two or more counterparts. Each counterpart will be deemed an original signature page to this First Amendment. This First Amendment may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGE FOLLOWS]

Contract Control Number: PLANE-202263304-01
Contractor Name: HENSEL PHELPS CONSTRUCTION CO.

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202263304-01
HENSEL PHELPS CONSTRUCTION CO.

DocuSigned by:
Joel Douglass
D04D83423ECB4A0...

By: _____

Joel Douglass

Name: _____

(please print)

Director of operations

Title: _____

(please print)

ATTEST: [if required]

By: _____

Name: _____

(please print)

Title: _____

(please print)