

## FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

**THIS FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES (“First Amendment”)** is entered into as of the date indicated on the City’s signature page below 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 **NEW FLOORING HORIZONS LLC**, an Alaska limited liability company authorized to do business in the State of Colorado (“Consultant”) (collectively the “Parties”).

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

**WHEREAS**, the City and Consultant entered into that certain Agreement for Professional Services (Contract No. 202265506-00) dated December 6, 2023 (the “Existing Agreement”), under which Consultant contracted to perform professional services for repair, removal, and replacement of flooring surfaces throughout DEN; and

**WHEREAS**, the Parties now desire to amend the Existing Agreement, as set forth in this First Amendment;

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

1. **Exhibit B** attached to and incorporated in the Existing Agreement is hereby deleted in its entirety and replaced with the attached **Exhibit B**.

2. **Exhibit C** attached to and incorporated in the Existing Agreement is hereby deleted in its entirety and replaced with the attached **Exhibit C**.

3. Section 5.A of the Existing Agreement is hereby amended and restated to read as follows:

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

4. Section 5.D of the Existing Agreement is hereby amended and restated to read as follows:

**“D. Fee, Rates, and Markups.** The Schedule of Rates and Markups is set forth in **Exhibit B**. Initial individual hourly rates and charges, including any applicable multiplier, are set forth in **Exhibit B**. The Project Manager, in his or her sole discretion, may annually adjust the hourly rates on the anniversary of the Effective Date through a Task Order

applicable to future work as further provided in the Task Order. Hourly rate adjustments shall not exceed the lesser of (i) five percent (5%) or (ii) the Denver-Aurora-Lakewood Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics for the applicable 12-month period.”

5. Section 6.C of the Existing Agreement is hereby amended and restated to read as follows:

“**C. Prevailing Wage.** To the extent required by law, Consultant shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Consultant shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the Agreement were encumbered.

Date bid or proposal issuance was advertised: March 6, 2023.

- i. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, Consultant will receive no additional compensation for increases in prevailing wages or fringe benefits.
- ii. Consultant shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.
- iii. Consultant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.
- iv. Consultant shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).
- v. If Consultant fails to pay workers as required by the Prevailing Wage Ordinance, Consultant will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Consultant fails to pay required wages and fringe benefits.”

6. Section 6.D. of the Existing Agreement is hereby amended and restated to read as follows:

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

7. Section 10.E.i of the Existing Agreement is hereby amended and restated to read as follows:

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

by Consultant to:

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

And by the City to:

New Flooring Horizons LLC  
1942 Broadway, Suite 314C  
Boulder, CO 80302  
Attn: Robinson Del Rosario”

8. Section 11.E.i of the Existing Agreement is hereby amended and restated to read as follows:

“i. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement.

Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. § 20-276.”

9. Except as modified by this First Amendment, all of the terms, provisions, and conditions of the Existing Agreement shall remain in full force and effect and are hereby ratified and reaffirmed.

10. This First Amendment shall not be effective or binding on the City until fully executed by all signatories of the City and County of Denver.

**[Signature Pages Follow]**

**Contract Control Number:**  
**Contractor Name:**

PLANE-202578769-01 / LEGACY-202265506-01  
NEW FLOORING HORIZONS LLC

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-202578769-01 / LEGACY-202265506-01  
NEW FLOORING HORIZONS LLC

By:  DocuSigned by:  
F788CF7B104F44F...

Name: Robinson Del Rosario Hidalgo  
(please print)

Title: Managing Member  
(please print)

ATTEST: [if required]

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

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

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

## Exhibit B Schedule of Rates & Markups

Flooring, Carpet, Terrazzo Repair/Replace Program Services 202265506

### Section A1 - Hourly Rate Pricing

Job Title	Hourly Rate*
Carpet Installer	\$ 113.94
Tile Setter	\$ 125.27
Tile Finisher	\$ 125.27
Project Manager	\$ 101.47

### Section B - Equipment Fees

Description	Price Per Day
Ride on Removal Machine	\$ 481.50
Electric Pallet Jack	\$ 85.60
Floor Stripper	\$ 80.25

### Section C - Misc. Fees

Description	Percentage Markup
**Subcontractor Services & Material Markup % (NTE 15%)	15%
**Direct Material Cost Mark Up % (With approval and NTE 20%)	20%
**Rental Equipment (not included in Section B) - No Mark up /Direct Cost Only	0%
**Disposal - No Mark up /Direct Cost Only	0%

\* All rates must include Prevailing Wage Rates where required.

\* All rates are fully burdened and the following items are assumed to be included in overhead cost, and will not be allowed under this contract: vehicle cost, fuel, parking, trip charges, mobilization, subsistence, per diem, travel expenses, insurance premiums, and administrative costs.

\*\*Direct cost above purchase from manufacturer or 3rd party. Receipts of actual cost need to be included with invoicing.

## **EXHIBIT C**

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

#### **A. Certificate Holder and Submission Instructions**

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249  
Attn/Submit to: [DENCOI@flydenver.com](mailto:DENCOI@flydenver.com)

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

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

#### **B. Defined Terms**

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

#### **C. Coverages and Limits**

##### **1. Commercial General Liability**

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

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

##### **2. Business Automobile Liability**

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

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



Pollution Endorsement and an MCS 90 endorsement on its policy.

- d. If Contractor does not own any fleet vehicles and/or Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
  - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. **Workers' Compensation and Employer's Liability Insurance**  
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. **Property Insurance**  
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
5. **Professional Liability (Errors and Omissions) Insurance**  
Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
6. **Unmanned Aerial Vehicle (UAV) Liability:**  
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
- a. Express written permission must be granted by DEN.
  - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
  - c. Drone equipment must be properly registered with the FAA.
  - d. Drone operator(s) must be properly licensed by the FAA.
  - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
7. **Excess/Umbrella Liability**  
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

#### **D. Reference to Project and/or Contract**

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

#### **E. Additional Insured**

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

#### **F. Waiver of Subrogation**

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

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

If Contractor and its employees performing services under this Agreement are domiciled in a monopolistic state this requirement shall not apply to Workers' Compensation policy(ies) issued by a state fund. However, Contractor understands any subrogation against the City from its state-funded Workers' Compensation insurer arising from a claim related to this Agreement shall become the responsibility of the Contractor under Section 14.01 Defense and Indemnification of this Agreement subject to the terms, conditions and limitations therein.

#### **G. Notice of Material Change, Cancellation or Nonrenewal**

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

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

#### **H. Cooperation**

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

#### **I. Additional Provisions**

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

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

#### **J. Part 230 and the DEN Airport Rules and Regulations**

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

#### **K. Applicability of ROCIP Requirements**

The City and County of Denver and Denver International Airport (hereinafter referred to collectively as "DEN") has arranged for certain construction activities at DEN to be insured under an Owner Controlled Insurance Program (OCIP) or a Rolling Owner Controlled Insurance Program (ROCIP) (hereinafter collectively referred to as "ROCIP"). A ROCIP is a single insurance program that insures DEN, the Contractor and subcontractors of any tier, and other designated parties (Enrolled Parties), for work performed at the Project Site. **Contractor is NOT eligible for or provided insurance coverage under a ROCIP program. Contractor must provide its own insurance as specified in this Agreement. If Contractor is assigned work to be conducted within a ROCIP Project Site it must comply with the provisions of the DEN ROCIP Safety Manual, which is part of the Contract Documents and which is linked below to the most recent manual.**

[DEN ROCIP Safety Manual](#)

DEN is additionally providing links to the DEN ROCIP Insurance Manual and the DEN ROCIP Claims Guide solely for Contractor's information.

[DEN ROCIP Insurance Manual](#)

[DEN ROCIP Claims Guide](#)

**Notice of Change to ROCIP:** DEN reserves the right to assign work per task order to a specific ROCIP program, if more than one is active, as well as terminate or modify a DEN ROCIP or any portion thereof. Further, dependent on factors including, but not limited to, the official timing and duration of the ROCIP project for which services are provided or related to under this Agreement, DEN may need to transition from one ROCIP program to another and introduce corresponding requirements for contractors. DEN will provide Contractor notice of changes regarding a ROCIP program as applicable to Contractor's work or responsibilities under the ROCIP Safety Manual.