

**FIRST AMENDMENT TO THE AGREEMENT**

**THIS FIRST AMENDMENT TO THE AGREEMENT**, is made and entered into as of the date stated on the signature page (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **STANTEC ARCHITECTURE INC.**, a corporation organized under the laws of the state of North Carolina and authorized to conduct business in the State of Colorado (“**Consultant**”).

**WITNESSETH:**

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

**WHEREAS**, the City and Consultant entered into a written Agreement #201839412 dated October 24, 2018 (“**Agreement**”) wherein they agreed Consultant will provide professional on-call architectural, planning and design services to the City; and

**WHEREAS**, the City, on August 17, 2017, entered into the Development Agreement with Denver Great Hall LLC, known by agreement #201735867 (the “**Development Agreement**”), for the design, construction and revitalization of the Jeppesen Terminal at the Airport (the “**Great Hall Project**”); and

**WHEREAS**, the City, on August 12, 2019, issued a Notice of Termination for the Development Agreement (the “**Notice of Termination**”); and

**WHEREAS**, following this Notice of Termination, the City competitively procured the professional services of the Consultant to serve as the Designer of Record (the “**DOR**”) for the remaining scopes of the Great Hall project which shall be issued as Task Orders under this Agreement (the “**Project**”); and

**WHEREAS**, the City now wishes to add additional funds, term and clarification to the Agreement with this First Amendment; and

**WHEREAS**, Consultant is willing and able to perform the Work;

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

1. Article II, Duties and Responsibilities of Consultant, paragraph B titled Professional Responsibility, is hereby amended to include the following:

(vi) The Consultant agrees to provide schedule and budget information to the Project Manager in accordance with the program’s defined business rhythm and cadence for reporting, progress measurement, baseline change control, variance analysis, data input, accruals, submittals, and other requests for input as defined by DEN and the Project Manager to support an integrated program management methodology. The

consultant shall provide schedule baseline, progress, and other related schedule performance directly into the Integrated Master Schedule (IMS). The Project Manager shall define required software needed to properly interface. For IMS and schedule interface, the consultant shall provide qualified staff capable operating Primavera P6 v17 or current version.

(vii) To the extent the work to be performed under this Agreement relates to the Great Hall Project, and subject to the terms outlined below, the Consultant shall serve as the DOR and agrees to assume the current design documents which the City obtained through the termination of the Development Agreement (the "Historic Design Documents"). A Task Order shall be issued which will outline an initial design review period which will allow the Consultant time to review, verify and redesign the essential elements of the Historic Design Documents which it believes are necessary for the Contractor to construct the Work described in the Task Order (the "Initial Design Review"). Within the relevant Task Order, the Parties shall assign a date of completion for the Initial Design Review. The Consultant acknowledges that time is of the essence, and will work diligently to complete the Initial Design Review in as expeditious a manner as possible within the applicable standard of care for design professionals and as more fully set forth in the applicable schedules in the individual Task Orders. This effort will focus on critical path decisions such that prioritization is given to items that are most beneficial to achieving a newly established construction schedule. Following the completion of the Initial Design Review, the Consultant shall be responsible, as the DOR, for all architectural designs created during Phase I of this Project. Consultant shall not be liable for engineering work performed by the subconsultants in Phase I up to the execution date of this Amendment. Additionally, the Consultant shall be responsible as the DOR for all designs and related deliverables for subsequent phases of the project. The Consultant acknowledges that the completion of the Initial Design Review by the Initial Design Review Date is an essential term of the Agreement. Failure to complete the Initial Design Review by the Initial Design Review Date will be considered a breach of this Agreement and may result in the termination of this Agreement. Alternatively, the City, in its reasonable discretion, may allow the Consultant to continue the Initial Design Review work after the Initial Design Review Date, but this continued Initial Design Review work shall be completed at a reduced rate to be negotiated in the applicable Task Order.

2. Article II, Duties and Responsibilities of Consultant, paragraph C titled Construction Administration, is hereby amended to read as follows:

(i) Any construction administration duties shall be outlined in the relevant Task Order and will set forth the engineering, architecture, construction administration, support staff and any other disciplines needed to complete the work outlined in the Task Order.

(ii) As part of the construction administration work included in the Task Order, the Consultant's Key Personnel shall work alongside the City's Contractor(s), other consultants, and the City to effectively integrate the design into the Project. The

Consultant's involvement includes, but is not limited to actions such as, integrating the design into the project schedule, designing a project for which a Contractor can construct, and economy of the design, and effectively interfacing with the construction Quality Control (QC) program.

3. Article II, Duties and Responsibilities of Consultant, paragraph D titled Remedies, subsection ii, Acts and Omissions is hereby amended to read as.

(ii) Acts and Omissions: The Consultant shall be liable to the City for acts and omissions of Consultant's employees, Consultants, subconsultants, agents and any other party with whom the Consultant contracts to perform any portion of the Work, including any design elements of any authorized Task Order. Should any design deliverables, milestones, phases or any other delineation of Work set forth in a Task Order, including the cost of constructing any design work exceed the established budget, the Consultant shall revise the design to meet the budgetary constraints. The Consultant will not be compensated for required rework should the design exceed the established budget by more than 10%. The foregoing is contingent upon the active and timely cost estimating by the Contractor and the City's responsiveness to Consultant's and Contractor's requests as more fully set forth in the Task Orders.

4. Article II, Duties and Responsibilities of Consultant, paragraph E titled Key Personnel Assignments, is hereby deleted in its entirety and replaced with the following.

(i) All key professional personnel identified in the Task Order will be assigned by Consultant or subconsultants to perform work under this Agreement for the entire Term of the Task Orders ("**Key Personnel**"). The Consultant shall provide for each proposed Key Personnel complete resumes, billing category and other information describing their ability to perform the tasks assigned. It is the intent of the Parties that all Key Personnel be engaged to perform their specialty for all such services required by the Task Orders and that Consultant's and any subconsultant's Key Personnel be retained for the life of the Task Orders to the extent practicable and to the extent that such services maximize the quality of work performed.

(ii) If Consultant decides to replace any of its Key Personnel; it shall notify the Project Manager in writing of the changes it desires to make. No such replacement shall be made until a replacement is approved in writing by the CEO or the CEO's designee, which approval shall be made in her sole and absolute discretion.

(iii) If, during the term of this Agreement, the Project Manager determines that the performance of an approved Key Personnel is not acceptable, he shall notify Consultant, and the Consultant will have ten (10) business days to correct the performance or provide a proposed replacement for the Key Personnel. If the Project Manager notifies Consultant that certain of its Key Personnel must be immediately reassigned, Consultant will immediately reassign the Key Personnel and use its best efforts to obtain adequate substitute personnel within fifteen (15) business days from the date of the notice.

5. Article II, Duties and Responsibilities of Consultant, paragraph F titled Subcontractors, is hereby deleted in its entirety and replaced with the following.

(i) All subconsultants shall be identified in the Task Order and will perform work under this Agreement for the entire duration of the Task Order (“Subconsultants”). It is the intent of the Parties that all Subconsultants be engaged to perform their specialty for all such services required by this Agreement and be retained for the life of this Agreement to the extent practicable.

(ii) Excluding any Subconsultants identified in the Task Order, no final agreement or contract with any additional or substitute subconsultant shall be entered into without the prior written consent of the CEO or the CEO’s 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 subconsultant, and any other information requested by the CEO. Any final agreement or contract with an approved subconsultant must contain a valid and binding provision whereby the subconsultant 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.

(iii) Because Consultant's represented professional qualifications are consideration to the City in entering into this Agreement, the CEO (or the CEO’s authorized representative) shall have the right to reject any proposed outside subconsultant or subcontractor for this work deemed by the CEO, in the CEO’s sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO shall have the right to limit the number of outside subconsultants or subcontractors or to limit the percentage of work to be performed by them, all in the CEO’s sole and absolute discretion. The CEO shall exercise reasonableness in making such decisions regarding subconsultants or subcontractors.

(iv) Consultant is subject to D.R.M.C. §20-112 wherein Consultant is to pay its subconsultants in a timely fashion. A payment is timely if it is mailed to the subconsultant 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 (§§ 20-107 through 20-118).

6. Article III, Term and Termination, paragraph A titled Term, is hereby deleted in its entirety and replaced with the following.

**A. Term.** The Term of this Agreement shall commence on December 1, 2018 (the “**Effective Date**”), and shall terminate on December 31, 2024, unless sooner terminated in accordance with the terms stated herein (“**Expiration Date**”). In the sole discretion of the CEO, the Agreement may be extended for two (2) additional one-year terms. Should for any reason the Term expire prior to the completion of a particular Task Order, in the CEO’s sole discretion, this Agreement shall remain in full force and effect to permit completion of any services commenced prior to the Expiration Date.

7. Article IV, Compensation and Payment, paragraph A titled Maximum Contract Liability, is hereby deleted in its entirety and replaced with the following.

**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 Consultant under the terms of this Agreement for any amount in excess of the sum of **Thirty-Three Million One Hundred Twenty-Five Thousand Dollars and NO Cents (\$33,125,000.00)** (“**Maximum Contract Liability**”). Consultant will be performing the services under each Task Order on an hourly rate basis or a lump sum basis up to the Maximum Contract Amount.

8. Article V, Insurance, Indemnification, and Dispute Resolution, is amended to include the following:

A.7. A project specific professional liability insurance policy will be purchased with a value to be determined in a Task Order which will cover design services on the project and with a deductible per claim not to exceed \$1M. The project specific policy will be the primary coverage for Consultant and its design subconsultants. Owner shall pay all premiums required for this policy. Consultant shall pay all deductibles required of this policy for any professional liability claims related to design. Consultant’s professional liability coverage shall cover design-related issues in excess of the project-specific policy.

9. Article VII, Standard City Provisions, paragraph B titled Small Business Enterprises, is hereby amended to include the following.

The Consultant has committed to achieve a 35% MWBE participation overall for work on the Great Hall project.

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

11. 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.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**Contract Control Number:** PLANE-201952467-01/Alfresco 201839412-01  
**Contractor Name:** STANTEC ARCHITECTURE INC

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-201952467-01/Alfresco 201839412-01  
STANTEC ARCHITECTURE INC

By:  \_\_\_\_\_  
4795E3DBABB0471...

Name: Josh Gould  
(please print)

Title: vice president  
(please print)

ATTEST: [if required]

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

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

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