

**SECOND AMENDMENT TO AGREEMENT
HOTEL, PUBLIC TRANSIT CENTER AND JEPPESEN TERMINAL INTERFACE
SOUTH TERMINAL REDEVELOPMENT PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(CM/GC)**

THIS SECOND AMENDMENT TO AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **MORTENSON/HUNT/SAUNDERS, a Joint Venture** formed under the laws of the state of Colorado that is authorized to do business in the State of Colorado (“**CONTRACTOR**” or “**CM/GC**”).

W I T N E S S E T H:

WHEREAS, the parties hereto entered into an Amended and Restated Agreement dated May 4, 2012 (the “Restated Agreement”) for Contractor to construct a hotel that is a signature program component and a primary focal point of the Terminal and Landside Redevelopment located south of the existing terminal facility at DIA, and to construct the structural foundation system, five (5) level podium, Public Transit Center, DIA train platform and canopy, and the Level 5 plaza and plaza canopies; furnish to City all fast-track preconstruction services, construction manager and construction experience and expertise (the “Project”); all construction administration, management, supervision, coordination and fast track project construction experience and expertise; and all construction services, work effort, labor, tools, supplies, manufactured components, equipment, materials, and everything else necessary and required to assist in the south terminal and landside expansion site preparation for the Project, as defined and described in the original contract; and

WHEREAS, the parties hereto entered into a Guaranteed Maximum Price Amendment (the “GMP”) to the Restated Agreement dated April 19, 2013 which incorporated and authorized the GMP and Proposal for the project, which included all Work necessary or required to complete the Project (the “GMP” and the “Restated Agreement” are collectively the “Agreement”); and

WHEREAS, the parties have determined that this Second Amendment is in its best interest and wish to enter into this Second Amendment to the Agreement in order to complete the Work, all other terms and conditions of the Agreement remaining unchanged unless expressly modified herein.

NOW, THEREFORE, for and in consideration of the recitals set forth above, which are deemed a material and substantive part of this Agreement, the City and Contractor agree as follows:

1. Subsection M, Reallocating Projected Cost Under-runs; City-Controlled Contingency Fund, of Article VI, Terms of Payment, is hereby revised to read in its entirety as follows:

M. Reallocating Projected Cost Under-runs: City-Controlled Contingency Fund. The CM/GC shall include an Allowance within the GMP for a City-Controlled Contingency Fund to be used to pay for additional costs arising from (a) any City-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) additional Allowance items after exhaustion of all existing Allowances, (d) selection by City of more expensive alternates than those used for calculation of the GMP, (e) City selection of substitutions that increase the Cost of the Work, or (f) Bulletins issued to CM/GC not otherwise included within the GMP, (g) Cost differences between the CM/GC Value Engineering/Trend Log and the final design documents, or (h) any other costs which otherwise would entitle CM/GC to an increase in the GMP.

2. Article VII, Maximum Contract Amount, is hereby revised to read in its entirety as follows:

ARTICLE VII – MAXIMUM CONTRACT AMOUNT: As provided for in Article V above and the Contract Documents, the Contractor has proposed and the City has accepted a Guaranteed Maximum Price Proposal in the amount set forth in **Exhibit C**. In consideration of the contractor’s performance under this Contract, the City shall pay to the Contractor all amounts due and owing up to the sum of **THREE HUNDRED EIGHTY FIVE MILLION DOLLARS AND NO/100 (\$385,000,000.00) (the “Guaranteed Maximum Price” or “GMP”)**. Included within the Maximum Contract Amount is **THREE HUNDRED EIGHTY TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLAR (\$382,250,000.00)** for the completion of the Work by the Contractor and **TWO MILLION SEVEN HUNDRED FIFTY THOUSAND (\$2,750,000.00)** million of owner controlled contingency.

In accordance with the terms of this Contract, the maximum Construction Contract Liability to be paid by the City to the contractor under this Contract shall not exceed **THREE HUNDRED EIGHTY FIVE MILLION DOLLARS AND NO/100 (\$385,000,000.00) (the “Guaranteed Maximum Price” or “GMP”)**. In no event will the City’s liability exceed the Maximum Contract Amount, as adjusted by duly authorized Change Orders, in accordance with this Contract. The parties specifically agree that any performance by the Contractor hereunder shall not subject the City to any cost, charge, or fee not specified above.

The City has disclosed to Contractor and Contractor acknowledges an amount less than the total Maximum Contract Liability has been appropriated and

encumbered for purposes of this Agreement. The City will, upon request at any time during the term of this Contract, disclose to Contractor the amount that has been appropriated and encumbered for purposes of this Contract, the total amount of Contractor's approved billings to that date, and the amount of appropriated funds that are at that date available for expenditure by the City under this Contract. Contractor is not eligible for payment for services performed or expenses incurred at any time when there are insufficient funds available for payment by the City for such services or expenses. Contractor is not obligated to provide services under this Contract when there are insufficient funds available to pay for such services. In such event, Contractor shall immediately notify the Manager, in writing, of the amount of funds available for expenditure, the amount needed to pay for pending services, and the date when Contractor will cease to perform services due to the unavailability of funds hereunder. However, nothing in this paragraph shall be construed to allow Contractor to stop work when the amount of funds available for expenditure hereunder is equal to or greater than Contractor's invoices to be performed and expenditures to be incurred in the next 15 days. If Contractor has ceased work under this paragraph, the Manager will notify Contractor in writing when sufficient funds to pay for future services have been appropriated, encumbered and made available for expenditure under this Contract and Contractor will resume providing such services within five (5) business days thereafter.

6. Exhibit H is hereby replaced in its entirety with a revised Exhibit H, attached hereto and incorporated herein.

7. Exhibit L is hereby replaced in its entirety with a revised Exhibit L, attached hereto and incorporated herein.

8. Except as modified by this Second Amendment, all of the terms and conditions of the Existing Contract shall remain in full force and effect.

9. This Second Amendment to Contract shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

[END OF PAGE]

IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

Contract Control Number: 201204956-2 (CE05030, CE10014)

VENDOR NAME: MORTENSON/HUNT/SAUNDERS, a Joint Venture

By: M.A. MORTENSON COMPANY

By: 

Name: Maja Rosenquist
(print)

Title: V.P. and General Manager
(print)

By: HUNT CONSTRUCTION GROUP, INC.

By: _____

Name: _____
(print)

Title: _____
(print)

By: SAUNDERS CONSTRUCTION, INC.

By: _____

Name: _____
(print)

Title: _____
(print)

IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

Contract Control Number: 201204956-2 (CE05030, CE10014)

VENDOR NAME: MORTENSON/HUNT/SAUNDERS, a Joint Venture

By: M.A. MORTENSON COMPANY

By: _____

Name: _____
(print)

Title: _____
(print)

By: HUNT CONSTRUCTION GROUP, INC.

By: 

Name: MATTHEW E. BARNES
(print)

Title: VICE PRESIDENT
(print)

By: SAUNDERS CONSTRUCTION, INC.

By: _____

Name: _____
(print)

Title: _____
(print)

IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

Contract Control Number: 201204956-2 (CE05030, CE10014)

VENDOR NAME: MORTENSON/HUNT/SAUNDERS, a Joint Venture

By: M.A. MORTENSON COMPANY

By: _____

Name: _____
(print)

Title: _____
(print)

By: HUNT CONSTRUCTION GROUP, INC.

By: _____

Name: _____
(print)

Title: _____
(print)

By: SAUNDERS CONSTRUCTION, INC.

By: Taryn Edwards

Name: Taryn Edwards
(print)

Title: Senior Vice President
(print)

Contract Control Number:

By: _____

Name: _____
(please print)

Title: _____
(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 _____



Exhibit H

INTERIM COMPLETION DATES

Construction Management / General Contractor (CM/GC)

For

Hotel, Public Transit Center, and Jeppesen Terminal Interface

The South Terminal Redevelopment Program

April 5, 2015

Revision Number 002

CONTRACT NUMBER: 201204956-2 (CE05030, CE10014)

City and County of Denver

Denver International Airport

Department of Aviation

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INTERIM COMPLETION DATES

- A. Substantial Completion of the South Terminal Redevelopment Program on August 21, 2015.
- B. Refer to Exhibit L – Special Conditions, Article 13.
- C. Starwood Turnover Schedule for a August 21, 2015 substantial completion:

Turnover Schedule

Contract Anticipated Opening Date - Hotel: November 21, 2015

COMPLETION STATUS			
#	LOCATION/AREA	TURNOVER DATE	CONDITION OF AREA NEEDED
1	Computer Data, MATV and Telephone Equipment Rooms.	July 24, 2015	A/C; electrical/data/telephone cabling working - TCO. This area would be keyed with keys turned over to Starwood.
2	TCO (Temporary Certificate of Occupancy) to allow Starwood employees to work on site and to allow the delivery of, storage of and installation of the OS&E.	September 22, 2015	A/C; electrical/data/telephone cabling working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
3	All administrative offices to include Sales and Accounting. Executive Offices and all Operational Departments offices.	September 22, 2015	A/C; electrical/data/telephone cabling working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
4	Back of House area to include the Loading Dock and Receiving Office and any storage area.	September 22, 2015	A/C; electrical/data/telephone cabling working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
5	Employee Locker Room Areas to include full bathroom facilities.	September 22, 2015	Complete working order; running water; all fixtures in place and working. No access to construction workers would be allowed at this point. Hotel staff only.

COMPLETION STATUS			
#	LOCATION/AREA	TURNOVER DATE	CONDITION OF AREA NEEDED
6	Back of House areas to include the Engineering Department and offices within. Housekeeping and offices within. Storage areas for these departments	September 22, 2015	Equipment supplied by GC or owner needs to be commissioned. A/C; electrical working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
7	The Security Office and all areas surrounding the employee entrance.	September 22, 2015	A/C; electrical/data/telephone cabling working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
8	Service Elevators	September 22, 2015	Shared use 60 days out, full use of at least one 30 days out.
9	Main Ballroom / Area or similar in size for Storage and Staging of OS&E	October 7, 2015	Area to be turned over to Starwood already punched by GC and accepted by Starwood. Includes all FF&E installed. Key access at this point will be monitored and controlled by Starwood.
10	Main Kitchen area including main dish room. Storage rooms for this area. Walk-in coolers, dry food storage areas. (If there is an additional "Restaurant" Kitchen, it falls under these same terms.)	October 22, 2015	Complete working order; running water; all fixtures in place and working. No access to construction workers would be allowed at this point. Hotel staff only. All inspections and commissioning is completed up to and including Health Inspection. Starwood must have the ability to cook and prepare food.
11	The Employee Cafeteria / Break Room	October 22, 2015	Complete working order; running water; all fixtures in place and working. No access to construction workers would be allowed at this point. Hotel staff only.
12	All Food & Beverage related storage areas. This includes both refrigerated and dry storage areas, which are not a part of the main kitchen.	October 22, 2015	All inspections completed up to and including Health Inspection. Turn key ready for Starwood Associates to begin working. Very limited contractor access.
13	All other storage areas for the hotel not mentioned above.	October 22, 2015	Turn key ready for working occupancy by hotel staff.
14	Minimum of 50% of all Rentable Guest Rooms in hotel	October 22, 2015	Rooms to be turned over to Starwood already punched by the GC and accepted by Starwood. Includes all FF&E installed. Key access at this point will be monitored and controlled by Starwood.

COMPLETION STATUS			
#	LOCATION/AREA	TURNOVER DATE	CONDITION OF AREA NEEDED
15	TCO (Temporary Certificate of Occupancy) to allow Starwood employees to sleep overnight in the hotel.	October 22, 2015	Allows Starwood Staff to stay in the hotel overnight.
16	All other meeting rooms, banquet rooms and any hospitality suites.	October 22, 2015	Area to be turned over to Starwood already punched by GC and accepted by Starwood. Includes all FF&E installed. Key access at this point will be monitored and controlled by Starwood.
17	Front Office Area and PABX to include the departmental offices as well as the front desk.	October 22, 2015	A/C; electrical/data/telephone cabling working - TCO - ready for permanent working occupancy for all administrative staff; to include furniture installation in all office areas. This area would be keyed with keys turned over to Starwood.
18	Front seating areas of the restaurant.	November 6, 2015	Turn key ready for use by Starwood to include all FF&E in place - TCO issued.
19	Front seating areas of the bar including all refrigeration and back service area.	November 6, 2015	All inspections completed up to and including Health Inspection. Turn key ready for Starwood Associates to begin working. Very limited contractor access.
20	Remaining 50% of all Rentable Guest Rooms of various types including suites.	November 14, 2015	Rooms to be turned over to Starwood already punched by GC and accepted by Starwood. Includes all FF&E installed. Key access at this point will be monitored and controlled by Starwood.
21	Front entry, including all automobile and pedestrian access.	November 14, 2015	Turned over to Starwood by GC, completed and construction cleaned.
22	Lobby areas, including valet and bell stand.	November 14, 2015	Includes all remaining front of house lobby areas.
23	All Guest Elevators and Escalators.	November 14, 2015	Operational and punched by GC and Starwood.
24	Retail Spaces, including business center and any gift shop space allocated - full build out.	November 14, 2015	Built - out
25	Exterior Lighting	November 14, 2015	Fully operational.

COMPLETION STATUS			
#	LOCATION/AREA	TURNOVER DATE	CONDITION OF AREA NEEDED
26	All signage work completed including interior and exterior locations.	November 14, 2015	Fully installed in compliance with all city & state codes.
27	All mechanical, electrical and plumbing systems.	November 14, 2015	Turned over and commissioned. Training of all areas completed with the engineering staff.
28	All fire alarm and life safety systems.	November 14, 2015	Fire / Life Safety Equipment in place ready for training. This will be a shared area throughout the training process.
29	All exterior landscaping work completed including any pool / terrace level landscaping.	November 14, 2015	Fully completed in compliance with site plans.
30	The Health Club, Pool and Spa facilities	November 14, 2015	Complete working order; running water; all fixtures in place and working. No access to construction workers would be allowed at this point. Hotel staff only. All inspections completed up to and including Health Inspection. Turnkey ready to serve guests.

Exhibit L

SPECIAL CONDITIONS

Construction Management / General Contractor (CM/GC)

For

Hotel, Public Transit Center, and Jeppesen Terminal Interface

The South Terminal Redevelopment Program

April 9, 2015

Revision Number 002

CONTRACT NUMBER: 201204956-2 (CE05030, CE10014)

City and County of Denver

Denver International Airport

Department of Aviation

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SPECIAL CONDITIONS

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SPECIAL CONDITIONS

SC-1 CONSTRUCTION CONTRACT GENERAL CONDITIONS

The Construction Contract General Conditions (“General Conditions,” “G.C.s” or “G.C.C.s”) which constitute a part of the Contract Documents are set forth in a separately published document, entitled “City and County of Denver, Department of Aviation and Department of Public Works, Standard Specifications for Construction, General Contract Conditions,” 2011 Edition, the Table of Contents to which is bound herein (which may be informally referred to as the Yellow Book). The General Conditions book will be available or purchase for \$10.00 per copy at the following locations during the business hours stated, Monday through Friday, excluding holidays or furlough days:

Public Works, Contracts Admin
Wellington E. Webb Municipal Office Building
6th Floor
201 West Colfax Avenue
Denver, Colorado 80202
8:00 a.m. to 4:30 p.m.

The General Conditions are also available on the City and County of Denver website at http://www.denvergov.org/dpw_contract_admin/ContractAdministration/ContractorReferenceDocuments/tabid/440535/Default.aspx

SC-2 DRAWINGS AND SPECIFICATIONS TO BE FURNISHED BY THE CITY

The City will provide the following Contract Documents to the CM/GC (“Contractor”) at no expense to the Contractor:

<u>Document</u>	<u>Quantity</u>
Volumes I & 2 (See the Master Table of Contents, page TOC-ii, for the content of these volumes)	Electronic
Volume 3	Electronic
Contract Drawings – reproducible	
Change Orders and Change Directives	Electronic

The Contractor will be responsible for supplying all subcontractors with copies of the Contract Documents at its expense, to be included and reimbursable within the GMP.

If Sensitive Security Information (“SSI”) is provided to the Contractor, the Contractor shall be required to comply with Department of Aviation, Standard Policies and Procedures No. 6003, “Contractor Protection of Sensitive Security Information,” or its successor, and 49 C.F.R. § 1520, or its successor.

The City will not supply any copies of the General Contract Conditions to the Contractor at City expense.

SC-3 CONTRACT AMOUNT; BID PRICE, GUARANTEED MAXIMUM PRICE (G.C. 103)

General Condition 103, CONTRACT AMOUNT, is hereby deleted in its entirety and replaced with the following:

“Contract Amount,” “Bid Price,” or “Bid Amount,” or “Maximum Contract Amount” means the Guaranteed Maximum Price (“GMP”) under the Contract.

In the General Conditions, the phrases “provided to the City at no cost,” “at no cost to the City,” “cost . . . shall be borne by the Contractor,” “costs shall be reimbursed by the Contractor,” “at the expense of the Contractor,” “Contractor shall bear any and all costs,” and “Contractor shall bear any and all additional costs,” mean that the costs in question are to be included as a Cost of the Work without any increase to the Guaranteed Maximum Price. Also, whenever a General Condition states that the Contractor shall be required to take any action, or responsible for any action or thing, it means that such requirements and responsibilities are included as a Cost of the Work without any increase to the Guaranteed Maximum Price, unless there is a specific statement to the contrary as to any such requirement or responsibility.

The Contractor hereby commits to complete the Work as defined in the Contract Documents as of the execution of this Amendment for the total amount of \$382,250,000.00. However, any situation where the design is not able to be physically implemented, which results in a clear and documented change to labor, materials, equipment then a change request may be presented, but if a feature simply needs to be moved or reoriented to accomplish the original intent of the design, but which does not result in changes to labor, materials, equipment, then no change request shall be presented by the Contractor. Nothing in this paragraph is meant to shift design liability from the Design Team to the Contractor.

SC-4 TIME OF BIDDING; TIME OF CONTRACTING

In the General Conditions, the words “time of bidding,” “bidding,” and the like, shall mean the time when the Contract is signed.

SC-5 CONTRACT DOCUMENTS (G.C. 104)

General Condition 104 CONTRACT DOCUMENTS is hereby deleted in its entirety and

replaced with the following:

"The Contract Documents" consist of the documents which are listed in Article II of the Agreement.

SC-6 CONTRACT TIME (G.C. 105)

General Condition 105 CONTRACT TIME is hereby deleted in its entirety and replaced with the following:

"Contract Time" is the time specified in the Contract within which the Contractor is required to substantially complete the Work. Substantial Completion shall occur prior to Final Completion. The Contract Documents may require completion on or before a certain specified date.

SC-7 CITY LINE OF AUTHORITY AND CONTACTS (G.C. 212)

In accordance with General Condition 212, the City's line of authority for administration of this Contract is:

- A. Chief Executive Officer (the "CEO" under G.C. 112). The CEO is Kim Day, Executive Office, 9th Floor, Airport Office Building, 8500 Peña Boulevard, Denver, CO 80249. Any references in to the Manager in the Contract Documents, shall mean CEO.
- B. The Director of the South Terminal Redevelopment Program (the "Director") reports to the Manager of Aviation. The Director is Stuart Williams, Department of Aviation/Airport Office Building, 4555 Airport Parkway, Level 4, Denver, CO 80239. The Director is the City Representative who has the day to day administrative responsibility of this Agreement. All notices, requests, payment applications and other correspondence from the Contractor shall be sent to the Director. All references in the Contract Documents to "Program Manager" shall mean "Program Director" or "Director".
- E. Parsons and associate consultants will serve as support at the direction of the Director. All authority and direction lies with the Director.

The CEO (Kim Day) or the Director is the only authority recognized to make changes in DIA/City and County of Denver leadership on the Project. These personnel changes in leadership must be mutually agreed upon with the Parties of this Agreement.

SC-8 CONSIDERATION (CONTRACTOR'S PROMISE OF PERFORMANCE) (G.C. 301)

General Condition 301 CONSIDERATION (CONTRACTOR'S PROMISE OF PERFORMANCE) is hereby deleted in its entirety and replaced with the following:

- A. The Contractor promises to perform the Work or cause the Work to be performed in a manner which is in compliance with the requirements of the

Contract Documents.

- B. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, temporary construction easements, permits and other facilities and services, necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work, as set forth in Exhibit C.
- C. The Contractor shall supervise and direct the Work of its Subcontractors and coordinate the Work with the activities and responsibilities of the Director and the Design Consultant to complete the Project in accordance with the City's objectives of cost, time and quality. The Contractor shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. The Contractor shall schedule and conduct weekly progress meetings at which the Director, the Design Consultant and the Contractor can jointly discuss such matters as procedures, progress and problems.
- D. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, safety techniques, sequences and procedures and shall coordinate all portions of the Work under the Contract Documents. The Contractor shall be responsible to the City for the acts and omissions of the Contractor's Personnel and all Subcontractors. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Designer in relation to the Construction Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor. The Contractor shall coordinate their work with other Contractors performing Work in or around the construction work limits.

SC-9 CONTRACTOR PERFORMANCE; SUBCONTRACTING (G.C. 501)

- A. With respect to General Condition 501, no more than 85% of the Work may be subcontracted. The Parties agree that the minimum requirement of 15% self-performed Work shall include the concrete work and other schedule-sensitive work. The Contractor will propose the process for subcontractor selection on each bid package. The process will be submitted for approval to DIA's Director, and such approval shall not be unreasonable withheld. The Director may determine that either competitive selection or self-performance by the Contractor will provide the best value for the Project. For those bid packages that require competitive selection, the Contractor shall solicit bids from at least three qualified subcontractors that are acceptable to DIA's Director. All bids shall be provided to the Director for review along with the Contractor's written recommendation for selection. Selection shall be subject

to the Director's approval. If Owner selects a subcontractor that is not the lowest competitive bid, then the CM/GC will have the right to increase the GMP by the difference between the low bid and the bid selected by the Owner. The Contractor shall receive an additional fee of 8% for self-performed Cost of the Work. The self-performed Cost of Work fee shall be established in addition to the fee as outlined in Article VI.D of the Agreement.

It will be calculated as follows: self-performed work is Cost of the Work times 8% fee, the 4.25% CM/GC fee will be calculated against the Cost of Work directly.

- B. If Contractor submits a bid to self-perform the Work other than concrete or other schedule-sensitive work, Contractor's bid shall be submitted at least twenty-four (24) hours prior to the submittal deadline for the other subcontractors, and all subcontractor bids shall be submitted directly to the Director rather than to the Contractor.
- C. CM/GC fee shall not be applied to any Work which exceeds Three Hundred Eighty Two Million Two Hundred Fifty Thousand Dollars (\$382,250,000.00) up to the Maximum Contract Amount.

The Parties agree that the following Design-Build Scope of Work may be incorporated into the Agreement as follows:

- A. Curtain Wall;
- B. Other critical design elements impacting schedule, as mutually agreed upon.

SC-10 SUBCONTRACTOR ACCEPTANCE, G.C. 502.1

General Condition 502.1 is amended to read as follows:

- A. Except as provided in the City's Small Business Enterprise (SBE), Minority and Woman Business Enterprise (M/WBE) and Disadvantaged Business Enterprise (DBE) contracting requirements, the City recognizes that prior to signing this Contract the Contractor may not have been able to negotiate for all portions of the Work which the Contractor proposes to subcontract. The City will, therefore, permit the Contractor- to propose additional Subcontractor(s) at any time during the Contract period provided, however, that any limitation on subcontracting has not been exceeded, and that all such SBE/MBE/WBE/DBE requirements are adhered to. If the proposed Subcontractor(s) are acceptable and the City, by letter to the Contractor, approves of the Subcontractor(s), the Contractor may enter into agreements with these parties. If any proposed Subcontractor(s) are not acceptable to the City, the Contractor must submit for City approval the names of substitute Subcontractors.

SC-11 COOPERATION WITH OTHERS

- A. The Technical Specifications describe the constraints on the physical work site areas. These descriptions are not exhaustive and the Contractor is required to coordinate its activities and work as may be required to meet FAA or City requirements while performing work on DIA. The Contractor shall also coordinate the performance of its Work with other Contractors performing work in or around the Contractor's project work limits. The Contractor shall coordinate and cooperate with the City and the City's Director regarding the use of "Shared Resources," including but not limited to: site security, cranes, trash removal, and portable restrooms,
- B. Without limiting the foregoing, the following contracts administered by the City involve or may involve work overlapping or adjoining the Work under this Contract, and may be prosecuted concurrently with the Work performed under this Contract. Other projects are listed below, and there may also be other adjoining or overlapping contracts which are not listed.

Contract Description
Enabling Construction Projects
Foundations and Piers
RTD FasTrack Station
Roadways
Parking
Others

SC-12 PROSECUTION AND COMPLETION OF THE WORK:

The Work to be performed under the Contract is described in Article II of the Contract Documents. Prosecution and completion during the Pre-Construction Phase shall be as described within Exhibit A – Scope of Work. If a GMP is agreed upon by the City, a separate Amendment and Notice to Proceed will be executed for the Construction Phase, and a calendar day schedule will be developed following Preconstruction Phase services. All Change Orders, upon agreement by the Parties, shall be incorporated into, and superseded by, the GMP.

SC-13 MILESTONES AND INCENTIVES

- A. The Contractor shall receive an incentive payment for achieving certain schedule milestone dates. Payment shall be made within thirty (30) days following the month in which the schedule milestone was met. Milestones can be achieved cumulatively by Contractor's performance.
- B. The schedule dates are met if the area is available for its intended use or subsequent follow-on work is allowed to begin. Punch list and other minor remaining work for such transition shall not be cause for withholding the incentive payment. In the event schedule impacts occur that are outside of the Contractors control, a day for day delay will be added to the milestone dates. The determination of whether the delay was outside of the Contractors control

shall be made by the Project Director. These key milestones provide interim measurement of project schedule accomplishments.

C. Contractor performance shall rely upon the Design Package schedule defined as follows:

#	Package Name	Package Use	Schedule
1a	Secant Pile/Pier Support	Procurement/Permit	01/20/12
1b	Tent Support Integration into Terminal Wall	CM/GC	02/03/12
1c	Terminal Wall	Procurement/Permit	02/17/12
1d	Secant Pile/Pier Support	IFC	02/17/12
1e	Terminal Wall	IFC	03/16/12
2a	Foundations	Procurement/Permit	03/01/12
2b	Foundations	IFC	03/30/12
3	Design Review (SD+1)	Procurement/Permit	03/30/12
4	Long Lead	Procurement	05/05/12
5a	PTC Superstructure, MEP, and Central Utility Plant (CUP) Modifications	Permit	07/02/12
5b	PTC Superstructure, MEP and CUP Modifications	IFC	08/30/12
6	Design Review/GMP (DD+1)	Pricing	09/28/12
7a	Hotel Superstructure	Procurement/Permit	12/12/12
7b	Hotel Envelope, MEP, Doors, Frames & Hardware	Procurement/Permit	03/01/13
7b	Hotel Envelope MEP, Doors, Frames, & Hardware	IFC w/VE Incorporated	04/15/13
8a	Finishes	Procurement/Permit w/VE Incorporated	04/15/13
8b	Finishes	IFC	06/01/13

D. The following incentive payments for meeting performance milestones are included as part of this Agreement:

1. **Substantial Completion of certain elements to accommodate construction by Regional Transportation District (RTD) of the FasTracks East Corridor/DIA line.** Contractor shall complete the following scopes of work no later than **January 1, 2014** (the “RTD IGA Substantial Completion Date”):
 - a. Structural system associated with train platform
 - b. Structural system associated with the train hall canopy and lower passenger canopies installed directly over the train platform. (Does not include the upper south hotel canopy or the hotel eyebrow)
 - c. Canopy Structural System paint
 - d. Structural support systems for the following items if applicable and shown in the IFC documents listed in the Drawings and Specifications in Exhibit I at the time the GMP amendment is executed:

- Signage
 - FIDS/BIDS/GIDS
 - Lighting
 - Public Address System
 - Visual information display systems
 - Security Cameras
 - Life Safety Systems (exit signs, strobes, horns, pull stations, and emergency lighting)
- e. Foundation system to support the OCS poles adjacent to the train platform
- f. Rough grading, drainage and subterranean components within the trackway including electrical power conduits
- g. RTD equipment enclosure rooms (Rooms: RTD COMM – 123, RTD ELEC – 122, DTP COMM – 116A, DTP STORAGE – 116, RTD ELEC STORAGE 107) inside the PTC to facilitate RTD system component installation. Interior spaces will be white box finished with all overhead rough in for MEP systems passing over the space completed. Temporary construction power and air conditioning will be available.
- h. Access to the RTD interior rooms from the train platform will be provided.

After the RTD IGA Substantial Completion Date it is understood and agreed that there will be a requirement and need for coordination between the Contractor and RTD to facilitate the completion of certain activities, including but not limited to the items listed below. These activities will be coordinated and performed so as not to impede the installation of the CRT System by RTD:

- i. Final train platform surface finishes
- j. MEP/FP systems that are hung from the Train Hall Canopy
- k. Items that are to be hung from the structural systems listed in paragraph 1. d. above.
- l. Glazing / covers over the Train Hall Canopy or lower passenger canopies.
- m. Structural systems construction, painting, and glazing of the upper south hotel canopy and hotel eyebrow
- n. Continuous access to the south face of the PTC/Hotel structure, specifically access to the tower cranes standing on the south end of the structure to allow building construction to continue.

The Project Director shall cause the Design Team to coordinate and incorporate the design of all items associated with the RTD IGA Substantial Completion Date requirements into the Project Design and as per the Design Schedule defined in Exhibit H, "Interim Milestone Schedule."

It is further agreed that after the RTD IGA Substantial Completion Date, it is anticipated that the access road running north and south that is adjacent to the train platform on both the east and west side is a shared space that will be available to both Contractor and RTD at all times to facilitate access for the ongoing installation efforts. Prior to the RTD IGA Substantial Completion Date, the Contractor will maintain an access road to the south of the train platform to allow for access from the east to west side of the site. It is expected that the Contractor is allowed access to cross this temporary roadway until which time the installation of the rail system occurs at this location.

It is understood that the substantial completion of the building and associated train platform will allow for passenger service to occur unobstructed on 1-August 21, 2015 or such later date as defined by the City and RTD.

Incentive Payment: \$4,000,000

2. Delivery of the South Terminal Redevelopment Project (Substantial Completion as defined in the General Conditions) on **August 21, 2015**.

Incentive Payment: \$1,000,000

E. The following interim milestone dates reconcile and further define the substantial completion of other components of Project work, but which are not related to the overall Substantial Completion date for the South Terminal Redevelopment Project as referenced above in Paragraph D.2. There is no incentive payment tied to these interim milestone dates, which are agreed herewith as follows:

- Substantial Completion (Central, East and West Escalators) – **November 6, 2015**
- Substantial Completion (Civil/Landscape) – **October 15, 2015***

* contingent upon:

- projected Art installation schedules as of March 27, 2015 are met, and;
- Artwork is sufficiently installed to allow all civil and landscape scope to complete prior to the close of the Fall 2015 planting season
- Substantial Completion (Insight Signage Package) – **November 6, 2015**
- Substantial Completion (AVI Package) – **November 6, 2015**
- Anticipated Hotel Opening Date – **November 19, 2015**

SC-14 SHARED SAVINGS

City agrees that if at the time Final Completion of the Work is achieved and the sum total of the Cost of Work, General Conditions, Taxes, Bonds, Insurance and the CM/GC Fee is greater than \$375,000,000.00 and equal to or less than \$382,250,000.00, then all savings shall accrue to the benefit of the Contractor. If the actual sum of the Cost of the Work, General Conditions, Taxes, Bonds, Insurance and CM/GC Fee is less than \$375,000,000.00 any Savings below this amount shall be split 50% to the Contractor and 50% to the City, and all remaining savings between \$375,000,000 and \$382,250,000 shall accrue to the Contractor. Such savings shall be due and payable with the Payment Application submitted for the month in which Final Completion occurs.

SC-15 LIQUIDATED DAMAGES

The Work shall be prosecuted in accordance with the Construction Schedule established at GMP and in the Interim Completion Dates schedule. The Contractor shall anticipate situations which would cause any Subcontractor difficulty in completing its portion of the Work within the time described in the Construction Schedule. If the Work is not completed on or before the Substantial Completion Date, as same may be extended, within ninety (90) calendar days after the applicable Interim Completion Date, as set forth in the table below, then in any of the above described events, the Contractor shall pay to the City as liquidated damages, and not as a penalty, an amount to be assessed as follows:

<u>Schedule Milestone/ Interruption Milestone</u>	<u>Liquidated Damages</u>	<u>Substantial Completion</u>
Intergovernmental Agreement	\$15,000/day	January 1, 2014
RTD Delay of Revenue Service	\$15,000/day	August 21, 2015
Hotel Substantial Completion	\$7,500/day	August 21, 2015
Loss of Concession Revenue*	\$7,700/day	N/A

*In the event construction activity interrupts the operations of any concessions within the Airport, thus airport concessions are unable to generate income for any regular 12 hour period, then Contractor shall pay as liquidated damages, and not as a penalty, for such lost revenue of the Airport in the amount specified above for Loss of Concession Revenue.

- A. Contractor performance shall rely upon the Design Package schedule defined in SC-13, above.
- B. The Contractor shall be granted unencumbered access to the Project site on or before December 17, 2012 to start Work. Contractor and Owner agree that unencumbered access shall be defined as no other contractor or construction entity working in the Project areas and after the defined dates without the express written approval of Contractor:
 1. Gridlines W5 and E5 and Gridlines C and Grid J after December 17, 2012.

2. Gridlines W6 and W10 and between gridlines E6 and E10 after December 17, 2012.
 3. Grid J to the south and the balance of the Project site after December 17, 2012.
- C. Contractor shall rely on a mutually agreed upon site access, exit routes and site logistics plan.
- D. Contractor shall have reliance on this definition of unencumbered access (as defined in the SCs), as it relates to meeting the Milestones and Incentives defined under SC-13, and the Interim Completion Dates defined in Exhibit H.

Notwithstanding any other provision of this Agreement, in no event shall Contractor's liability for Liquidated damages to the City under this Agreement exceed the total cumulative sum of Five Million Dollars (\$5,000,000).

SC-16 CONSEQUENTIAL DAMAGES

Notwithstanding anything in the Contract Documents to the contrary, neither Party shall be responsible or held liable to the other Party for any indirect, incidental, special or consequential damages of any nature whatsoever arising out of or relating to this Agreement or the Project, including without limitation, liability for loss of use of property, loss profits or other revenue, loss product, increased expenses or business interruption, however the same may be caused, all such claims being expressly waived by the Parties. Nothing herein shall preclude the City from collecting liquidated damages, as applicable, under SC-15.

SC-17 CONTINGENCY

Contractor will include a Construction Contingency which is Cost of the Work within the GMP of not less than Three Percent (3%) for the Contractor's sole and exclusive use. Construction Contingency is to be used for Means and Methods, Scope of Work defined by the Contract Documents and the GMP, acceleration as required by the Contractor to maintain schedule and other issues deemed necessary by the Contractor in order to meet its obligations of the Agreement.

SC-18 PROTECTION OF PROPERTY AND WORK IN PROGRESS (G.C. 803)

General Condition 803.1C is amended to read as follows:

- A. The work of the City or other contractors; provided that the Contractor shall not be responsible to provide the direct protection of the work of the City or other contractors, or for the safety of other contractors performing

work outside the Contractor's Work area.

SC-19 PAYMENT PROCEDURE (G.C. 902)

General Condition 902, PAYMENT PROCEDURE, is hereby deleted in its entirety and replaced by the following:

- A. Payment to the Contractor shall occur as set out in this G.C. 902 if the proper payment procedure is followed.
- B. The Contractor shall submit a complete application for payment on the day of each month designated in writing by the Director. The application for payment shall be submitted on the form and in the format required by the Director. The City shall pay each Cost of the Work certified as having been incurred by the Contractor (to the extent approved by the City) and proportionate Fee as of the last day of the payment period covered by such application, less retainage and amounts to be withheld by the City as provided herein and to the extent such application for payment is not disapproved for payment by the City under G.C. 906.13. Retainage shall be governed by SC-54.
- C. The designated City representative will review the application and either recommend to the Director such amounts as reasonably determined are due or notify the Contractor in writing of the reasons for withholding approval. The application for payment, when recommended by the Director and signed by the appropriate City officials, establishes the total amount due the Contractor under a particular pay application. From this amount the sums to be withheld are deducted. This application is then forwarded to the City Controller for payment. Upon approval by the city Controller, the City Auditor reviews the certified payrolls related to the pay application. A check will be issued by the City Controller upon approval of the payment application and all certified payrolls.
- D. All applications for progress payments, except the final application, shall be subject to correction on subsequent applications, following the discovery of error.

SC-20 SCHEDULE OF VALUES FOR LUMP SUM SUBCONTRACTS (G.C. 903)

Special Condition 903, SCHEDULE OF VALUES FOR LUMP SUM CONTRACTS, is hereby deleted in its entirety and replaced by the following:

- A. The Contractor shall furnish to the Director, for review and approval, a Schedule of Values, in such detail as the Director shall request. The Schedule of Values shall show the amount included for each principal category of work and shall be in proper balance. No pay application shall be submitted until the submitted Schedule of Values is approved in writing by the Director.

- B. Should the City issue a Change Order that decreases or increases the Contract Amount, the Schedule of Values shall be modified to reflect the amount of such decrease or increase and resubmitted to the Director at least fifteen (15) Days prior to the pay application reflecting such increase or decrease.

SC-21 APPLICATIONS FOR PAYMENT (G.C. 906)

General Condition 906, APPLICATIONS FOR PAYMENT, is hereby deleted in its entirety and replaced by the following:

Pre-construction Services Payment Structure:

- A. The Contractor shall submit Applications for Payment on the negotiated hourly rates (refer to Article V B). All Applications for Payment shall be accompanied with corresponding time sheets and receipts as back-up.

Construction Services Payment Structure:

- A. Each progress payment application shall show the estimated amounts of Work anticipated through the completion of the project by month per the Schedule of Values. Each complete application shall contain a list of Subcontractor and material invoices. If requested by the City, the Contractor will furnish the City with invoices shown on the lists which accompany any application for payment. Where payment is for Preconstruction Cost at fixed hourly rates Contractor shall provide time sheets in support of hours billed.
- B. Application for payment shall be based on approved Cost of the Work items incurred, completed and/or certified by the Contractor. The application shall specify the Cost of the Work so certified as having been incurred by the Contractor for Work performed during the preceding period. The Contractor's Fee shall be paid based on the actual Cost of Work items incurred. Each application for payment shall also be accompanied by a written schedule of values which sets out the Cost of the Work for the Project together with the Contractor's accounting of the percentage of completion of each line item of Cost of the Work of which the City is liable to pay the Contractor, which will be coordinated with the approved Critical Path Method Schedule.
- C. The Contractor shall certify in writing with each application for payment that to its knowledge the Project will be completed at a cost within the Guaranteed Maximum Price, as modified by City-authorized change orders, and shall identify with reasonable particularity any circumstances which could result in the total cost to the Contractor (including Fee) in completing the Project exceeding the Guaranteed Maximum Price.
- D. The Contractor is required to use the City B2G Contract Management System to report all subcontractor payments and shall adhere to the City's Procedure for Reporting Subcontractor Payments. It is the Contractor's obligation to ensure that complete subcontractor information is entered into the B2G System

- prior to submission of the first application for payment in order to avoid any delays in payment. The Contractor shall, prior to the submission of each subsequent invoice, ensure payments to subcontractors have been entered into the B2G System, including subcontractor confirmation of amount of payment received, for services performed during the prior billing period.
- E. Each application for payment for materials or equipment stored on or off the Project site shall be accompanied by bills of sale to establish the City's title to such material or equipment free and clear of liens and encumbrances; evidence of property insurance covering such materials or equipment; evidence, as to material and equipment stored off the Project site, that the same have been properly labeled as the City's property and segregated from the vendor's other inventory; and, if required by the City, contracts and financing statements sufficient to create a security interest in favor of the City in materials or equipment stored off the Project site which remain in the possession of the vendor of such materials or equipment.
- F. Each progress payment application shall show each Subcontractor or Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. The Contractor will assure that the Subcontractors and/or Suppliers are filing for and are being paid for only the value of materials and services delivered and performed upon or incurred for the Project and that the Subcontractors and/or Suppliers are not over-billing for the effort performed. The Contractor shall, prior to or with the submission of each application for payment, furnish to the City proper evidence accounting for the distribution to Subcontractors and/or Suppliers of funds received under prior applications together with proper releases and waiver, in form and content acceptable to the City, obtained in connection therewith.
- G. If the Contractor disputes a Subcontractor's or Supplier's entitlement to a portion of the previous progress payment, the Contractor shall submit to the City copies of any written communication from the Contractor to such Subcontractor or Supplier explaining the Contractor's determination not to render payment to such Subcontractor or Supplier, together with proof of service of such written communication upon such Subcontractor or Supplier.
- H. Each application for payment shall be signed. Such signed application for payment shall constitute a representation by the Contractor to the City that the Work has progressed to the point indicated; that the quality of the Work covered by the estimate is in accordance with the Contract Documents; that each obligation covered by the payment application has been properly incurred, is a proper charge and has not been the basis of any previous application (except as otherwise noted); that the money received as a result of the application will be used to discharge the Contractor's obligations under the Contract; and that the Contractor is entitled to payment in the amount requested. The Director or the Design Consultant, as appropriate, must also verify and certify the estimate of Work completed prior to any acceptance by the City.

- I. By submitting an application for payment, the Contractor warrants that: (i) the title to the Work covered by an application for payment will pass to the City upon receipt of payment by the Contractor; (ii) the Work covered by previous payment applications is free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens", except for any interest created by retainage; and (iii) no Work covered by an application for payment is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or any other person or entity.
- J. The Contractor shall not include in its application for payment any billing for defective Work or for work performed by Subcontractors or Suppliers if it does not intend to pay the Subcontractors or Suppliers for such work.
- K. Approval of an application for payment of Work completed or actual payment by the City shall not foreclose the right of the City to examine the books, records or in-place Work of the Contractor to determine the correctness and accuracy of any item.
- L. Should the City decline or fail to approve for payment any items of the Contractor's Fee, the Cost of the Work, or any other item shown on an application for payment, the City shall notify the Contractor in writing, setting forth the reasons for such action. The City shall pay that portion of each payment application which is not disapproved in writing by the City.
- M. No progress payment or partial or entire use or occupancy of the Project by the City shall constitute an acceptance of Work not in accordance with the Contract Documents.

SC-22 SUBCONTRACTOR RELEASES (G.C. 907)

The release form referred to in General Condition 907 is attached to these Special Conditions. It is entitled "Denver International Airport Partial Release."

SC-23 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS, FEDERAL PROVISIONS

This contract 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 airport purposes.

SC-24 DISCOUNTS, REBATES AND REFUNDS

Cash discounts obtained on payments made by the Contractor shall accrue to the City if

(1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured. Amounts which accrue to the City herein shall be credited to the City as a deduction from the Cost of the Work.

SC-25 LISTING OF ACCEPTABLE MANUFACTURERS

The Technical Specifications may list "Acceptable Manufacturers" for certain products. Such listing identifies manufacturers of certain products which have been determined by a preliminary review to be able to meet the basic product and/or system technical requirements. The listing is not intended to provide a blanket endorsement or acceptance of the manufacturer's specified products or product line. All products from listed manufacturers must meet the detailed requirements of the Technical Specifications. Products that do not meet all detailed Technical Specifications are not acceptable and will be rejected, regardless of whether the manufacturer was listed as "acceptable." The Contractor is responsible for determining the acceptability of all products under the Technical Specifications prior to submission of products for approval.

SC-26 CITY INITIATED CHANGES (G.C. 1102)

G.C. 1102.2 is amended by replacing the phrase "Change Request" in all its occurrences in such G.C. with the phrase "Change Notice."

G.C. 1102.3 is amended by replacing the phrase "Field Order/Change Directive" in all its occurrences in such G.C. with the phrase "Change Directive."

SC-27 ADJUSTMENT OF CONTRACT AMOUNT (G.C. 1104)

General Condition 1104, ADJUSTMENT TO CONTRACT AMOUNT, is hereby deleted in its entirety and replaced by the following:

1. **Contract Amount Adjustments.** All adjustments to the Contract Amount shall be determined by using one or more of the following methods:
 1. A Negotiated Lump Sum. The Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the City may reasonably require the Contractor to produce in order to permit the City to evaluate any lump sum Contractor Change Request. In pricing such proposals, the Contractor shall include estimates of the type of costs described in G.C. 1104.2.
 1. Unit prices (as stated in the Contract Documents or subsequently

agreed upon) multiplied by final verified quantities of work performed;

2. Costs as determined in a manner previously agreed upon by the parties, which include markups, that do not exceed those set forth in G.C. 1104.2 below; or
3. Time and Material costs as determined in the manner described in G.C. 1104.2, Calculation of the Contract Adjustment. These amounts may be reduced where necessary to take into account the cost of Base Contract Work, Work included in approved Change Orders, Work described in other Field Order/Change Directives, idle time for workers and/or equipment when Work could have been performed in other locations or when the number of workers or amount of equipment provided exceeded the number or amount required to perform the Work, unsatisfactory Work, or Work which may be or was performed concurrently with the changed Work and which cannot be easily segregated from the changed Work .

2. **Calculation of the Contract Adjustment.** In no event shall the charge or credit to the City associated with any change exceed the sum of the following:

2. Direct Labor. The actual net, direct increase or decrease in the cost of the Contractor's labor. Such cost shall include only the cost associated with the workers who actually perform the changed Work. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured.
3. Labor Burden. Contractor's actual costs for liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e. social security. The burden shall be itemized and include all small tools and miscellaneous supplies. The total labor burden for such small tools shall be three percent (3%) of the Direct Labor cost.
4. Supervisory Labor and Labor Burden. Allowable Burden, Fringe and Overhead Cost Rates, as defined within Exhibit D-1, shall be applied to Supervisory Hourly Rates to create the Total Labor and General & Administrative Costs.
5. Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Work. If actual costs are not available, this cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Such cost shall be based on buying the material,

supplies and equipment in the largest practical quantity to receive quantity discounts.

6. Equipment Costs. Equipment Rental Rates are defined within the attached Exhibit A of D-2.

Equipment provided by the Contractor shall be estimated, billed and audited per the agreed upon Equipment Rental Rate List. Mobilization/demobilization costs for Base Contract Work shall be negotiated within the GMP. Mobilization/demobilization costs for Change Order Work will be negotiated within the Change Order.

The rates established in connection with use of equipment shall not be subject to audit and adjustment, and the review of such items of Cost of Work shall be limited to a determination of the quantities of the units for which payment has been made or is requested. Mobilization/demobilization costs for base contract Work shall be negotiated within the GMP. Mobilization/de-mobilization cost for changed or additional work will be negotiated within the change order.

7. Mark-up for Overhead And Profit. The Contractor's Fee on the calculated change of Cost of Work shall be the only amount added to such calculated Cost of Work as markup and profit to the Contractor, not including any work self- performed by the Contractor or work performed under a subcontract by the Contractor
8. Bonds, Insurance, Permits and Taxes. The actual increases or decreases in the cost of premiums for bonds and insurances, permit fees, and sales, use or similar taxes related to the Work.

C. Totals as Equitable Adjustment. The Contractor agrees that the total of the above items constitute an equitable adjustment for any and all costs or damages resulting from a change.

D. No Equitable Adjustment for Obstruction by Contractor. No equitable adjustment shall be made as a result of costs resulting from any act, hindrance, obstacle, obstruction, interference or omission of the Contractor, its Subcontractors, Suppliers, or surety, or any other entity or individual acting on behalf of the Contractor.

E. Calculation of Certain Equitable Adjustments.

1. In case of delay in completion of the entire Contract due to drawings, designs or specifications which are defective and for which the City is responsible, the equitable adjustment for delays or costs incurred prior to notification to the City of such defect shall only include the extra cost and time reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the

Contractor identified, or reasonably should have identified, such defect.

2. An equitable adjustment shall not include increased costs for delay resulting from the Contractor's failure to continue performance during determination of any Contractor Change Request or claim.

F. **Price Reductions for Defective Cost or Pricing Data.** If it is later determined that pricing adjustments to the Contract were not correct due to incomplete or inaccurate pricing data by the Contractor or any Subcontractor or Supplier or that lower prices were reasonably available, the price shall be reduced accordingly and the Contract Amount modified by an appropriate Change Order.

G. **Variation in Quantity of Unit Priced Items.** Where the quantity of a unit-priced item in the Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than twenty-five percent (25%) above or below the estimated quantity, and where this difference changes the total original Contract value by more than five percent (5%), an equitable adjustment in the Contract Amount may be made by Change Order. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completing the Work, the Contractor may request, in writing, an extension of time in accordance with G.C. 1105.

1. Disposition of Excess or Obsolete Property. When the cost of materials, supplies, equipment or other personal property made obsolete or excess as a result of a delay is included in the equitable adjustment, the Director shall have the right to prescribe the manner of disposition of such property.

SC-28 CONSTRUCTION INSPECTION BY THE CITY (G.C. 1701)

General Condition 1701, CONSTRUCTION INSPECTION BY THE CITY, is modified as follows:

- A. Owner will contract with an independent, third party quality assurance entity to provide quality assurance for the Project. This will not include staff of DIA, Parsons or existing DIA quality assurance consultants. These persons may perform any tests and observe the Work to determine whether or not designs, materials used, manufacturing and construction processes and methods applied, and equipment installed satisfy the requirements of the drawings and specifications, accepted Shop Drawings, Product Data and Samples, and the Contractor's warranties and guarantees. The Contractor shall permit these inspectors unlimited access to the Work and provide means of safe access to the Work, which cost shall be included as a Cost of the Work without any increase to the Guaranteed Maximum Price. The Contractor shall provide

access to “concealed” work by whatever means are necessary including “de-construction” or intrusive sampling. If the City finds inspected work to be “non-conforming” to the Contract Documents (Plans and or Specifications) or defective in any way, all costs associated with the de-construction, sampling, correction, replacement and re-work shall be the expense of the Contractor. In addition, the Contractor shall provide whatever access and means of access are needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the Work and shall respond to any other reasonable request to further the inspector's ability to observe or complete any tests. Such inspections shall not relieve the Contractor of any of its quality control responsibilities or any other obligations under the Contract. All inspections and all tests conducted by the City are for the convenience and benefit of the City. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and the City may reject or accept any Work or materials at any time prior to the inspections pursuant to G.C. 2002, whether or not previous inspections or tests were conducted by the inspector or a City representative.

- B. The Building Inspection Division will perform building code compliance inspections for structures designed for human occupancy. It is the Contractor’s responsibility to schedule and obtain these inspections. If a code compliance inspection results in identification of a condition which will be at variance to the Contract Documents, the Contractor shall immediately notify the Director and confirm such notification with formal correspondence no later than forty-eight (48) hours after the occurrence.

SC-29 AUTHORITY OF INSPECTORS (G.C. 1702)

General Condition 1702, AUTHORITY OF INSPECTORS, is hereby deleted in its entirety and replaced by the following:

Inspectors assigned to the Work by the Director are authorized to reject any Work, any materials, or any component of the Work that is not as required or specified in the Contract Documents. Such rejection will be confirmed by the Director in writing to the Contractor. Inspections may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to alter or waive the provisions of the Contract Documents, nor is the inspector authorized to issue instructions contrary to the provisions of the Contract Documents or to act as foreman for the Contractor.

SC-30 REVISIONS TO G.C. 1901

General Condition 1901, “Notice of Substantial Completion,” is revised to read as follows:

“When the Contractor considers that the Work is substantially complete as defined in G.C. 119, the Contractor shall notify the Director in writing that the Work is ready for inspection and shall include with its Notice of Substantial

Completion of the Work a list of minor items to be completed or corrected that would not affect beneficial occupancy.”

SC-31 TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY (G.C. 2202)

General Condition 2202, TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY, is hereby deleted in its entirety and replaced by the following:

- A. The performance of Work under the Contract may be terminated in whole or in part, at any time without cause by the Manager of Aviation and the City and County of Denver, for any reason. Such termination shall be effected by giving not less than three (3) Days' written notice to the Contractor specifying the extent to which performance of the Work is terminated and the date upon which such termination becomes effective.
- B. Upon receipt of such notice of termination, the Contractor shall:
 - 1. Stop work as specified in the notice;
 - 2. Terminate all orders and subcontracts except as necessary to complete Work which is not terminated;
 - 3. Settle outstanding liabilities and claims with the approval of the Manager;
 - 4. Complete performance of such part of the Work as has not been terminated; and
 - 5. Take such other actions as may be necessary, or as may be directed by the City, for the protection and preservation of the property related to the Contract.
- C. Except as provided herein, any inventory resulting from the termination of the Contract may, with written approval of the Manager, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the City.
- D. Upon receipt of notice of such termination, the Contractor shall submit to the Director a request for final payment, in a form and with certification prescribed by the City. Such request shall be submitted promptly but in no event later than sixty (60) Days from the effective date of termination, unless extended in writing by the Director upon the written request of the Contractor within such sixty (60) Day period.
- E. The final payment to the Contractor after a termination for convenience shall be calculated by adding the following amounts:

1. Any actual costs incurred by the Contractor since the last approved pay request that are reimbursable as a Cost of the Work plus the proportionate Fee on such costs;
 2. The actual costs incurred by the Contractor for terminating the Work and for protecting the Work in the manner, if any, directed by the City, plus the proportionate CMGC Fee, if any, on such costs; and
 3. The amount of retainage withheld by the City to date, provided all required lien and claim releases have been submitted.
- F. The acceptance of final payment as calculated above shall constitute a waiver of all Claims by the Contractor except those previously made in accordance with G.C. 1301 which have been separately identified by the Contractor as unsettled in the final Project Application for Payment.
- G. The Manager may, from time to time, under such terms and conditions as the Manager may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled. If the total of such payments is in excess of the amount to which the Contractor is entitled, the excess shall be payable by the Contractor to the City upon demand, together with interest computed pursuant to statute, for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the City.
- H. The settlement for the Work performed shall not relieve the Contractor or its surety from responsibility for defective Work and/or materials on the completed portion of the Work nor for labor and materials or any other items as guaranteed by the surety bond or bonds.
- I. The City shall be given full access to all books, correspondence, records, electronic files and data bases, and other materials of the Contractor relating to the Contract in order to determine the amounts to be paid on account of the termination of the Contract under this G.C. 2202. The Contractor shall, as requested by the City, furnish clear copies of any such materials.
- J. In the event the parties fail to agree in whole or in part on the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this G.C. 2202, the Contractor may appeal the Director's determination as to the amount owed in accordance with Title 13, except that, if the Contractor has failed to submit its request for payment within the time provided above and has failed to request an extension of such time, it shall have no such right of appeal.

SC-32 DISPOSAL OF NON-HAZARDOUS WASTE AT DADS

In accordance with the Landfill Agreement made between the City and Waste

Management of Colorado, Inc., Contractor will be required to haul dedicated loads (non-hazardous entire loads of waste) to the Denver-Arapahoe Disposal Site ("DADS") for disposal. DADS is located at Highway 30 and Hampden Avenue in Arapahoe County, Colorado. The City will pay all fees associated with such disposal but the Contractor shall be responsible for the costs of transporting the loads. Non-hazardous waste is defined as those substances and materials not defined or classified as hazardous by the Colorado Hazardous Waste Commission pursuant to C.R.S. §25-15-207, as amended from time to time, and includes construction debris, soil and asbestos. Bidders shall not use Gun Club Road between I-70 and Mississippi Avenue as a means of access to DADS.

SC-33 PROHIBITION ON USE OF CCA-TREATED WOOD PRODUCTS

The use of any wood products pressure-treated with chromated copper arsenate (CCA) is prohibited. Examples of CCA-treated wood products include wood used in play structures, decks, picnic tables, landscaping timbers, fencing, patios, walkways and boardwalks.

SC-34 HAZARDOUS AND EXPLOSIVE MATERIALS OR SUBSTANCES (CG 808)

General Condition 808.1 is amended by adding the following at the end:

The Contractor shall not be responsible for remediating any hazardous materials that it has not placed, used, stored, disposed or released in the Work area, except to the extent that the Contractor contributes to or exacerbates an existing, known condition. Nothing in the section is intended to relieve the Contractor of its obligations to comply with the Technical Specifications - Division 1, including without limitation section 01566.

SC-35 WAIVER OF: PART 8 OF ARTICLE 20 OF TITLE 13, COLORADO REVISED STATUTES.

The Contractor specifically waives all the provisions of Part 8 of Article 20 of Title 13, Colorado Revised Statutes regarding defects in the Work under this Construction Contract.

SC-36 FACILITY SECURITY AND PERSONNEL ACCESS

The Contractor shall conduct all its activities at the Airport in compliance with the Airport security system rules and regulations, which are administered by the Airport Operations Division. The Contractor shall obtain the proper access authorizations for its employees, subcontractors and suppliers (i.e., Badges and Permits), and shall be responsible for such persons' compliance with all the Airport rules and regulations. A copy of the Contractors' section of the Airport Security rules and regulations are available for Contractor review at the Airport Access Services Office, Concourse A East Subcore, 4th Level. Persons regularly entering the construction areas must obtain personnel access badges from the Airport Access Services Office and must display badges , at all times,

upon entering the construction, restricted and sterile areas of the airport.. Any employee, subcontractor or supplier who violates such rules may be subject to revocation of his access authorization, including authorization for access to the construction site and all other restricted and sterile areas.

The security status of the Airport is subject to change without notice. These contract Special Conditions are applicable to the current security status of the Airport. Should the security status of the Airport change at any time during the term of this Contract, a written notice shall be issued to the Contractor detailing all applicable security modifications from the airport's current security status. The Contractor shall take **immediate steps** to comply with those security modifications as directed in the written notice.

If these security modifications involve any additional project cost, the Contractor shall submit a Contractor Change Request in accordance with the General Conditions for the additional cost. The Contractor Change Request shall outline in specific detail the effects of the security modifications on the Contractor's performance of the Contract, and shall provide a detailed cost breakdown for each item for which the Contractor is requesting reimbursement.

The Contractor shall return to the City, at contract completion or termination, or upon demand by the City, all access keys issued to it by the City to all areas of the Airport. If the Contractor fails to return any such key or keys at contract completion or termination or upon demand by the City, the Contractor shall be liable to the City for all the City's costs, including the City's labor costs for employees, incurred in re-coring doors and any other work which is required to prevent compromise of the Airport security system. In order to collect such costs hereunder, the City may withhold funds in such amount from any amounts due and payable to the Contractor under this Contract.

The construction of all the Project / Task Items that involve the breaching of any airport perimeter security boundary or continued access to restricted access rooms or areas will require the posting of authorized contract security personnel to maintain required security controls. The Contractor's **Guarantee Maximum Price / Total Contract BID Amount / Task Order Proposal** shall include the cost of providing security services to maintain control and supervision of any and all airport perimeter security boundary breaches and for the duration of work activities where access to restricted areas is required and until the airport perimeter security boundaries are reestablished.

When security boundaries are opened for any reason, the Contractor must maintain one hundred percent (100%) control and supervision for the entire time that the openings are present to prevent unauthorized access to the secure / restricted access areas.

THE IMPORTANCE OF THIS SPECIAL CONDITION CANNOT BE OVER-EMPHASIZED. SEVERE FINANCIAL PENALTIES AS WELL AS CONTRACT TERMINATION COULD RESULT IF AIRPORT PERIMETER SECURITY REQUIREMENTS ARE NOT STRICTLY FOLLOWED. THE REQUIREMENT TO PROVIDE ONE HUNDRED PERCENT (100%) CONTROL AND SUPERVISION OF BREACHES IN THE AIRPORT'S PERIMETER SECURITY BOUNDARY IS ABSOLUTE. AT NO TIME, DURING WORK AND NON-WORK HOURS SHALL ANY BREACHES

IN THE AIRPORT'S SECURITY PERIMETER BE UNSUPERVISED AND / OR UNSECURED.

For off-hours of construction, the Contractor may choose to erect a temporary wall to close all perimeter openings. The wall construction shall be of sufficient materials and strength to prevent access to the airport's Sterile/Restricted Areas. The Contractor shall submit for review and approval, the details and materials for the temporary closure of security perimeter breaches for review and approval.

The Contractor will provide contract security guard services to maintain supervision of these openings. The security services must provide coverage to allow for lunch breaks, comfort breaks and etc. The security services **must** be obtained from the following contract security guard company:

HSS

900 S. Broadway, Suite 100
Denver, Colorado 80209

DIA Contact:

Glenn Spies
(303) 342-4323

All security guards provided for this project must have a Denver Airport SIDA Badge.

The DIA Security Guard Contractor may change between the bidding or proposal phase of this contract from Notice to Proceed to closure of all security perimeter breaches. The Contractor shall maintain a contractual relationship with the Security Guard Contractor holding the most current contract with Denver International Airport.

The Contractor shall continue to provide security of these areas until such time that the breaches in the airport's security perimeter have been permanently secured.

The Contractor shall submit a written security plan for approval to the Director of Airport Security prior to the start of construction on any work where a breach of the perimeter security boundaries is required.

SC-37 CONSTRUCTION ACCESS

The work site(s) is (are) located at landside. The Contractor shall have access to the work site via limited access routes.

The City will not provide parking spaces in any of the existing parking structures or surface lots for the Contractor's employees or subcontractor employees at the Airport. However, DIA will designate acceptable locations for temporary or shared parking areas during the term of the Work, which may require improvement by CMGC for CMGC's use. Arrangements for transportation and parking for all of its and its subcontractors employees will be the responsibility of the Contractor. The GMP shall include any and all costs associated with the Contractor's and subcontractors' employee parking.

Information about parking facilities and charges is available from the Airport Parking Office. Refundable deposits are required for all parking passes.

Unless specifically required by the Contract Documents, the Contractor shall install no fences or other physical obstructions on or around any project work area without the approval of the City.

SC-38 VEHICLE PERMITTING

Vehicle access on the Airport Operation Area (“AOA”) is controlled by and requires permission from the Airport Access Services Office. It is not anticipated that the Contractor will need to operate vehicles on the AOA to perform the Work. Only direct construction support vehicles and/or equipment will be allowed in the contractor's work areas or sites.

SC-39 ACCESSIBLE PARKING SPACES, ACCESS AISLES AND ROUTES OF TRAVEL

If any Work is performed in or adjacent to parking facilities at the Airport, the Contractor is responsible for compliance with this SC-39. “Accessible” parking spaces and access aisles as used in this SC-39 mean parking spaces and access aisles which are accessible for, and reserved for use by, persons with disabilities. These parking spaces and access aisles are designed and built to standards established by federal regulations implementing the Americans with Disabilities Act of 1990 (“ADA”), and are marked by signage. “Accessible routes of travel” as used herein means routes through parking facilities which comply with ADA accessibility standards, including degree of slope and absence of obstructions.

Accessible routes of travel and accessible parking spaces and access aisles must be kept free of obstructions and construction debris at all times. No accessible parking spaces or access aisles or accessible routes of travel shall be relocated, blocked or rendered unusable unless the contractor has obtained specific advance approval in writing for such actions from the airport’s ADA Compliance Officer.

When prosecution of the Work requires that accessible spaces be temporarily blocked, those accessible spaces and their access aisles shall be temporarily relocated to another location as close as possible to an accessible building entrance. Temporary signage that identifies these parking spaces and access aisles as reserved for the handicapped shall be installed, and the accessible route shall be clearly marked as required.

Before blocking or relocating accessible parking spaces or accessible routes of travel, the contractor must obtain written approval from the DIA ADA Compliance Officer, by submitting a completed request form, which will be provided to the Contractor by the Director at the preconstruction meeting if it is not included as a standard form in Section 01999 of the Technical Specifications. The request shall include the location of alternative spaces and/or routes, and specifications of the temporary signage to be used. Work shall not proceed without this approval.

If a vehicle is parked in any accessible space which is either temporary or approved to be relocated, the contractor will not remove signage or take any other action which would allow the access aisle for such parking space to be blocked. Such actions must be postponed until the parking space is no longer occupied.

SC-40 VENDORS AND SUPPLIERS

The Contractor shall provide the Director's office with a list of its equipment/material vendors and suppliers. Vendors or suppliers shall access the construction work areas via the Contractor's access route, described in SC-38 above. All delivery vehicles are subject to search.

SC-41 SITE COMMUNICATIONS

Any site communications at DIA must be approved by DIA Operations.

SC-42 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

The Contractor and its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession, or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Contractor from City facilities or participating in City operations.

SC-43 INSURANCE

Owner and Contractor shall maintain insurance in accordance with the provisions of Exhibit Q. The Contractor specifically agrees to comply with each condition, requirement or specification set forth in **Exhibit Q** for each required coverage during all periods when the required coverage's are in effect.

Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. CMGC shall ensure that their first tier subcontractors will comply with Article 16.2 of CMGC's standard subcontract agreement, including any amendments to comply with the requirements of the Owner Controlled Insurance Program (OCIP).

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City and County of Denver in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or sub-consultants. The Contractor shall assess its own risks as it deems appropriate and/or prudent, maintain higher limits and/or broader

coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types.

Contractor and City shall furnish the City and County of Denver with certificates of insurance (ACORD form or equivalent approved by CCD) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City and Contractor before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of the Contract. All insurance coverages for subcontractors shall be subject to the minimum requirements identified in the Exhibit. All subcontractors' certificates and endorsements shall be received and approved by the Contractor before work commences. The City reserves the right to request copies of these certificates at any time.

All certificates required of Contractor by this Contract shall be sent directly to Denver International Airport, Business & Technologies, Airport Office Building, Room 8810, 8500 Pena Boulevard, Denver, Colorado 80249. The City project/Contract 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 Contract at any time.

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 Contract, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 - 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

City shall provide an Owner Controlled Insurance Program (OCIP) in compliance with **Exhibit Q**, which coverage City agrees will be primary over any other insurance provided by an enrolled party. City agrees to allow Contractor to review all proposed coverage forms and OCIP manual prior to implementation of the OCIP. Following implementation of the OCIP, Contractor agrees to provide a credit to the City for the cost of insurance coverage being provided by the OCIP. The amount of such credit will be determined based upon a review of actual OCIP coverages. The City shall be named as an additional insured on Contractor's general liability policy in the event that Contractor includes the costs of said coverage in the GMP.

BUILDER'S RISK INSURANCE

The Owner shall purchase and maintain property insurance written on a builder's risk "all risk" or equivalent policy form to the full insurable value of the Project on a replacement cost basis. The insurance shall provide coverage against the perils of fire and extended

coverage, theft, vandalism, malicious mischief, collapse, rigging and hoisting, flood, earthquake, windstorm, testing, debris removal, terrorism and other perils or causes of loss customarily covered under an All Risk policy. This insurance shall also cover portions of the work stored off the site and also portions of the work in transit. Owner shall provide a copy of the policy upon request of Contractor.

Such property insurance shall be maintained until final completion. The insurance shall include the Contractor, and Subcontractors of any tier as additional insureds.

If the property insurance requires deductibles, the Owner shall be responsible for such deductibles.

Loss of Use. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

Waiver of Subrogation - Adjacent Property and Completed Project If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site, or if after final payment property insurance is to be provided on the completed Project, the Owner shall waive all rights in accordance with the terms of the waiver of Subrogation below for damages caused by fire or other causes of loss covered by such property insurance. All policies shall provide this waiver of subrogation by endorsement or otherwise.

Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this contract or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

SC-44 PRECONSTRUCTION PHASE BONDS (G.C. TITLE 15)

No Payment and Performance Bond will be required for the Preconstruction Phase of the Project. A \$500,000 Payment Bond in DIA's standard format will be required for the Preconstruction Phase of the Project. All other requirements pertaining to Performance and Payment Bonds shall remain unchanged. This SC-44 does not modify any requirements of G.C. Title 15 as applied to the Construction Phase of the Project.

SC-45 ATTORNEY'S FEES

Colorado Revised Statute 38-26-107 requires that in the event any person or company

files a verified statement of amounts due and unpaid in connection with a claim for labor and materials supplied on this project, the City shall withhold from payments to the Contractor sufficient funds to insure the payment of any such claims. Should the City and County of Denver be made a party to any lawsuit to enforce such unpaid claims or any lawsuit arising out of or relating to such withheld funds, Contractor agrees to pay to the City its costs and a reasonable attorney's fee. Because the City Attorney Staff does not bill the City for legal services on an hourly basis, Contractor agrees a reasonable fee shall be computed at the rate of one hundred dollars per hour of City Attorney time.

SC-46 TRADEMARKS, COPYRIGHTS, PATENTED DEVICES. MATERIALS AND PROCESSES (G.C. 319.3)

General Condition 319.3 is amended to read as follows:

The Contractor and the surety shall, at all times, defend, save harmless, and indemnify the City, its Officers, agents and employees from and against all fees, royalties, demands, claims, or suits by reason of any infringement or alleged infringement of such patent rights, copyrights, trademark rights, intellectual property rights or artist's rights; provided, however, that this indemnification shall not apply when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in drawings, specifications or other documents prepared by the City.

SC-47 CONTRACTOR'S WARRANTIES, GUARANTEES AND CORRECTION OF WORK (GC 1801)

General Condition 1801.4.A is deleted as inapplicable to the Work performed under this Agreement because this is a Department of Aviation project.

SC-48 CHANGE IN LAW CLAUSE

Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules, regulations or taxes subsequent to the establishment of a GMP by the parties, the parties shall negotiate in good faith as to whether the change in law requires an equitable adjustment of the GMP and/or Contract Time to the extent such changes increase the Contractor's time or cost of performance of the Work

SC-49 WARRANTY

Change General Conditions Title 1801.1 as follows:

Delete "and suitable for the purpose used" from the first sentence.

Add the following ", except for those inherent in the quality of the Work required or permitted by the Contract Documents" after the words "faults and defects" in the first sentence.

Add the following language:

“The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.”

SC-50 FACILITY COMMISSIONING AUTHORITY

Not Used

SC-51 BUILDING INFORMATION MODELING

Contractor has provided a base BIM program that is attached as Exhibit R – Building Information Modeling Services.

SC-52 QUALITY ASSURANCE/QUALITY CONTROL

The Project specific Quality Assurance Program inclusive of Special Inspections shall be developed under the direction and guidance of the Director and with input from the Architect and or Engineer of Record A/EOR. The Contractor shall develop and implement a Quality Control Plan for the project. Special Inspections shall be the recommendations outlined by the International Building Code Section 17 and included by the A/EOR within the Design Documents. The role of each party during the design phase and the construction phase is defined as follows:

A. QC/QA DURING THE DESIGN PHASE

1. **Design Team.** During the development of the design and construction documents the Director shall cause the Design Team to provide a Quality Control Program that will ensure their design is in compliance with all user groups and stakeholder's standards and requirements. These standards and requirements shall be incorporated into each design package, defined under Special Conditions 16; "Milestones and Incentives of this Agreement." The Project Director shall cause the Design Team to incorporate within each design package all required Special Inspection and or testing requirements.
2. **DIA/Construction Director.** Under the guidance of the Director, DIA shall coordinate with the A/EOR and ensure that the appropriate and necessary DIA and other stakeholder Design Standards and requirements as determined appropriate by the Project Director are specifically outlined and incorporated within the Contract documents.
3. **CM/GC.** The Contractor’s role is to provide review of the documents to ensure the constructability of the design and to point out those instances when certain design standards, requirements and Special Inspections may cause the Project to exceed budget or negatively impact the Project schedule.

4. **User Groups and Stakeholders.** The Project Director shall cause each user group or stakeholder to review each design package for compliance with their requirements, prior to issuance of the final Design Packages as noted in Special Conditions 16.

B. QC/QA DURING THE CONSTRUCTION PHASE

1. **CM/GC.** The Contractor will develop and maintain a Quality Control program that ensures compliance with the contract documents and code standards for all self-performed work, subcontractors and material suppliers. All submittals are to be reviewed for contract compliance by the Contractor before they are submitted to the A/EOR for approval. The Contractor is responsible to schedule all third party testing, special inspections and Building Department inspections.
2. **Design Team.** The role of the A/EOR is to ensure contractor compliance with the requirements of the contract documents. This is accomplished through submittal review and approval, RFI response, and regularly scheduled site visits. If there is a disagreement on the interpretation of a specified inspection requirement the Director shall cause the A/EOR to make the final determination.
3. **Director.** Director shall be responsible for contracting with all independent testing agencies hired to perform third party inspections and Special Inspections required by the Project Specifications. Director shall ensure all required inspections occur no later than 24 hours in advance of notice by Contractor. Director shall align their special inspections process with the requirements as outline by the A/EOR within the Contract Documents prior to issuance of the final Design Packages as noted in Special Conditions 16.
4. **CCD Building Department.** Building Department will conduct all required inspections as outlined in the City and County of Denver requirements. CM/GC is responsible to coordinate the scheduling of these inspections and to provide access to the inspectors.

SC-53 PUBLIC ART PROGRAM

This project is subject to the City's public art program. Contractor's obligations to cooperate and coordinate with other work forces, as set forth in General Conditions Section 701 shall include the requirement to cooperate and coordinate with any artist, contractor or subcontractor designing and installing public art at or in conjunction with the Project.

SC-54 RETAINAGE

Addition to General Conditions Title 908 as follows:

Notwithstanding the above, the parties acknowledge that this Project will be constructed in discrete phases. The parties agree that retainage shall be tracked per phase, and that the City will release retainage per phase as set forth in the attached retainage release schedule (**Attachment 3**).

SC-55 MONTHLY PROGRESS REPORT DEVELOPMENT

Invoice Report: By the 15th of each month the Contractor shall submit to the Project Manager an electronic submittal of the Monthly Progress Report for the immediately preceding month.

The exact format, contents, and detail level required for the Monthly Progress Report will be established jointly by the Project Manager and the Contractor within fourteen (14) days after Notice to Proceed based on a proposed format prepared by the Contractor. The Report content may change from time to time as established by the Project Manager and Contractor.

The Contractor shall be available, when requested, to meet with City representatives to discuss the current Monthly Progress Report.

SC-56 INFORMATION MANAGEMENT FORMAT & ELECTRONIC-MAIL PROTOCOLS

All information between the Contractor and the City, subcontractors, consultants, subconsultants, major permanent material vendors, and other entities with participation in the design or construction of the Program / Task Order shall be serialized.

Following the Notice to Proceed, the Consultant shall meet with the City to review its proposed method of correspondence / submitted communication control. Following this review and approval, the Consultant shall institute its control procedures for the Program.

General procedures for professional services, construction and design / build contracts require the serialization of all design and construction correspondence between the City, consultants, subconsultants, contractors, subcontractors and all project entities. All Consultants, Subconsultants, Contractors and Subcontractors that communicate via e-mail must maintain an e-mail tracking system and submit all applicable document tracking logs with all applications for payment / invoices. Web-based programs or other methods of tracking electronic communications may be proposed. However, those systems must be compatible with DIA records management date system. The Consultant shall review its system with the Records Management group to determine its compatibility with DIA procedures, process and systems.

SC-57 PAYMENT TO CONTRACTORS

The application for payment shall be submitted through Textura® Corporation Construction Management Website. Contractor recognizes and agrees that it shall be

required to use the Textura Construction Payment Management System for this Project. Contractor further agrees that, to the fullest extent possible within the CPM System, the City shall be entitled to all non-Confidential records, reports, data and other information related to the project that are available to Contractor through the CPM System, including, but not limited to, information related to Contractor and subcontractor billings. To that end, Contractor agrees that it will activate any available settings within the CPM System that are necessary to grant the City access to such non-Confidential information related to the contract and the project. Applications for payment shall be based on the Contract Unit Prices or the approved Schedule of Values described in GC 903.1.

In accordance with General Condition 902, PAYMENT PROCEDURE, the party(ies) responsible for review of all Pay Applications shall be:

Agency/Firm	Name	Telephone
MHS	Brett Sisco	720-259-4869

In accordance with General Contract Condition 906, APPLICATIONS FOR PAYMENT, each Application submitted shall include the following:

- A. The estimate of Work completed shall be based on the approved schedule of values or unit prices, as applicable, and percent of work complete.
- B. Each Application for Payment shall include each and every independent subcontractor's payroll information including pay dates and pay amounts.
- C. The Contractor shall also submit to the Auditor and other appropriate officials of the City in a timely fashion, information required by General Contract Conditions 1004, REPORTING WAGES PAID.

In accordance with General Contract condition 907, RELEASE AND CONTRACTORS CERTIFICATION OF PAYMENT, Applications for Payment must be accompanied by completed Partial or Final claim Release Form, as appropriate, from EACH subcontractor and supplier, **AND** the Contractor's Certification of Payment Form.

END OF EXHIBIT



DENVER INTERNATIONAL AIRPORT FINAL LIEN RELEASE – CONSTRUCTION (Subcontractor)

Project: _____

Date: _____

City Contract No. _____

Subcontractor Contract No. _____

Dated: _____, 20__

FROM:

Subcontractor: _____

(1) Last Progress Payment for billing period ending _____, 20__

Address: _____

\$ _____

City/State: _____

(2) Does not apply

Telephone: _____

TO:

Contractor: _____

(3) Does not apply

Address: _____

City/State: _____

(4) **Total Paid to Date:**
\$ _____

() SBE () DBE () MBE () WBE () Non

The undersigned Subcontractor hereby (1) acknowledges receipt of the progress payment referred to above as the Last Progress Payment which, when added to the total of all previous progress payments, constitutes full payment for all labor, services, materials and supplies which the undersigned has provided for use in and upon the project described above through _____, 20__ and, (2) hereby releases the Contractor, Surety, the City and County of Denver, and any intermediate subcontractor or supplier of any tier from any and all claims prior to the above mentioned date.

The Subcontractor also hereby agrees that the Contractor, Surety, the City and County of Denver, and any intermediate subcontractor or supplier of any tier shall be released from any and all claims arising out of its performance or non-performance of any contract associated with the above project.

Subcontractor: _____

Certified by: _____

Title: _____

Date: _____



DENVER INTERNATIONAL AIRPORT PARTIAL LIEN RELEASE – CONSTRUCTION (Subcontractor)

Project: _____ Date: _____

City Contract No. _____ Current Subcontract
Amount: \$ _____

FROM: Subcontractor _____ (1) Last Progress Payment for billing
period ending _____ 20____

Address: _____ \$ _____

City/State: _____ (2) Progress invoiced for previous billing
period (if unpaid) _____ 20____

Telephone: _____ \$ _____

TO: Contractor _____ (3) Progress invoiced for current billing
period ending _____ 20____

Address: _____ \$ _____

City/State: _____ (4) **Total Paid to Date:**
\$ _____

() MBE/WBE () SBE () DBE () Non

The undersigned Subcontractor hereby (1) acknowledges receipt of the progress payment referred to above as the Last Progress Payment which, when added to the total of all previous progress payments, constitutes full payment, less retainage, for all labor, services, material and supplies which the undersigned has provided for use in and upon the project described above through _____, 20____ and, (2) hereby releases the Contractor, surety, the City and County of Denver, and any intermediate subcontractor or supplier of any tier from any and all claims prior to the above mentioned date, except for the withheld retainage.

The Subcontractor also hereby agrees that the Contractor, Surety, the City and County of Denver, and any intermediate subcontractor or supplier of any tier shall be released from any and all claims arising out of its performance or non-performance of any contract associated with the above project through _____, 20____, except for withheld retainage after it has received full payment, less retainage, of the amount invoiced for the current billing period.

Subcontractor: _____

Certified by: _____

Title: _____

Date: _____

SC-54 MHS RETAINAGE RELEASE PROJECTIONS THROUGH 2015

	Total Value	Column Totals	Current-12	2013				2014				2015					
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
South Terminal Redevelopment																	
TOTAL BILLINGS	\$380,827,009	\$380,827,009	\$12,048,082	\$18,004,097	\$21,799,950	\$30,780,052	\$45,891,447	\$60,410,239	\$58,096,514	\$46,858,564	\$35,861,243	\$32,099,438	\$15,971,784	\$3,005,599			
Running Total			\$12,048,082	\$30,052,179	\$51,852,129	\$82,632,181	\$128,523,628	\$188,933,867	\$247,030,381	\$293,888,945	\$329,750,188	\$361,849,626	\$377,821,410	\$380,827,009			
Retainage Running Total Held			\$602,404	\$1,502,609	\$2,592,606	\$4,131,609	\$6,426,181	\$9,446,693	\$12,351,519	\$14,694,447	\$16,487,509	\$18,092,481	\$18,891,071	\$19,041,350			

Retainage Held																
Retainage Released	(\$19,041,350)					\$778,455	\$480,125	\$351,254	\$10,215	\$355,350	\$2,598,621	\$1,521,258	\$2,612,512	\$2,616,445	\$3,005,792	\$4,711,323
Running Total Released						\$778,455	\$1,258,580	\$1,609,834	\$1,620,049	\$1,975,399	\$4,574,020	\$6,095,278	\$8,707,790	\$11,324,235	\$14,330,027	\$19,041,350

