

## FIRST AMENDMENT TO AGREEMENT

**THIS FIRST AMENDMENT TO AGREEMENT (“First Amendment”)** is made and entered into on the date of the City’s signature page by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **METRIX ADVISORS, LLC**, a Colorado limited liability company (the “Consultant”).

### WITNESSETH:

**WHEREAS**, the parties entered into an Agreement dated May 4, 2012 for professional services of “Third Party Administrator” to implement and manage DIA’s Premium Value Concessions Program (PVC Program), (the “Original Agreement”); and

**WHEREAS**, the parties desire to amend the Original Agreement to increase the scope of work and related compensation, as hereinafter set forth;

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

1. Effective as of the date this First Amendment is executed, **Exhibit A, Scope of Work**, of the Original Agreement is hereby amended to include **Exhibit A-1, Additional Scope of Work**, which is appended hereto and incorporated herein.

2. Section 1, “**LINE OF AUTHORITY**,” of the Original Agreement is hereby amended to delete the word “Commercial,” remove the name “Bryan Touchstone” and add the following sentence: “The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of City authority upon written notice to Concessionaire.”

3. Section 3, “**COMPENSATION AND PAYMENT**,” of the Original Agreement is hereby amended by deleting said section entirely and substituting therefor the following:

### **SECTION 3. COMPENSATION AND PAYMENT:**

A. Fee: Except as provided below, the City hereby agrees to pay the Consultant, and the Consultant agrees to accept as its sole compensation for its services rendered under this Agreement, a monthly lump sum payment in the amounts stated in **Exhibit B** (the “Consultant’s Monthly Fee”). The Consultant’s Monthly Fee shall be paid to the Consultant based on monthly invoices submitted by the Consultant in accordance with Section 3.F below. No premium will be charged for overtime hours worked, and no local travel or administrative costs will be paid by the City.

B. Exceptions to the Consultant’s Monthly Fee. The lump sum compensation stated in **Exhibit B** is based on certain assumptions. For example, one such assumption is that Consultant will perform all of the services required by this Agreement, including but not by way of limitation: monthly scoring and reporting, Program Benefit determination and secret shopping, for up to 115 Food and Beverage, Retail, and Services concession locations on Concourses A, B, and C (the “Scoring Pool”). Accordingly, the parties hereby

agree that certain additional payments to the Consultant are warranted with no change to the lump sum payments stated in **Exhibit B** when any of the following exceptions occur:

1. Additional Concourse Concession Locations. If the Scoring Pool grows larger than 115 concession locations, Consultant will be paid a one-time fee of Four Thousand Dollars (\$4,000.00) per additional concession location.

2. Terminal Concession Locations Added. If, at any time, a concession location from the Terminal is added to the Scoring Pool, Consultant will be paid a one-time fee of Four Thousand Dollars (\$4,000.00) per additional Terminal concession location.

3. Additional Minor Merchandise Categories. If additional minor merchandise categories are added to the PVC Program and a new PVC survey form must be developed, Consultant will be paid an additional one-time set-up fee of five thousand dollars (\$5,000.00) per additional PVC survey form developed. (Note: As described in Section 2.A *supra*, the addition of services providers at DIA are exempted from this fee.)

4. Peer Airport Mystery Shopping. If Consultant Mystery Shops peer airports (as defined in **Exhibit A**) and the number of shopped locations exceed 900 in any given calendar year, Consultant will be compensated sixty-five dollars (\$65.00) for each additional Mystery Shop performed.

5. RMU Mystery Shopping. If Consultant Mystery Shops RMU concessions (as defined in **Exhibit A1**), locations in any given calendar year, Consultant will be compensated sixty-eight dollars (\$68.00) for each RMU Mystery Shop performed.

6. Training. For each year Consultant is asked to develop, provide, and administer a Customer Service Training program, Consultant will be paid in accordance with a proposal for training content, delivery, program management, supporting activities and budget prepared by the Consultant and approved by the City no later than October 31<sup>st</sup> of the prior year. The City will provide sufficient space for the number of participants attending each training session at no cost to the Consultant. For 2014, the City will pay Consultant the sum of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) per month for each month Consultant provides training.

C. Additional Services. The Consultant may also perform services, hereinafter referred to as "Additional Services," that relate to the subject matter of this Agreement, but which the Deputy Manager or his designee determines to be not described in the Scope of Work or in excess of the requirements of the Scope of Work. The Consultant shall be compensated for such Additional Services at the standard hourly rate for analytical services of \$125.00 per hour (although some work orders may carry a different rate depending on the work requirements. Any deviation from the standard rate must be approved prior to commencement of work) and only if the services and the amount of fees and reimbursable expenses therefor have been authorized in writing in advance by the Deputy Manager or his designee through a work order process. Work orders

shall contain a basic scope of work for each request, a not-to-exceed budget amount, hourly rate for the project, and appropriate approval from the Consultant and the City.

D. Reimbursable Expenses: There will be no reimbursable expenses allowed under this Agreement except as expressly provided in Section 9.F below.

E. Reserved

F. Invoices:

(1) Payments of the Consultant's Monthly Fee due hereunder shall be made to the Consultant pursuant to invoices submitted by the Consultant in accordance with this Agreement, which invoices have been audited and approved by the City. Invoices shall meet the following requirements:

- a) Each invoice shall bear the signature of an authorized officer of the Consultant certifying that the information set forth in the invoice is true and correct.
- b) Amounts invoiced shall reflect and summarize the fee structure incorporated into this Agreement. The cost of preparing and submitting invoices shall not be billed.
- c) Invoices shall include status reports identifying the progress of all work involved and pertinent data relative to the SOW.

(2) The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with the City's Prompt Payment Ordinance, D.R.M.C. Section 20-107, *et. seq.* The Consultant agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

(3) The City reserves the right to require such additional documentation as it deems appropriate to support Consultant's invoices.

(4) The City reserves the right to reject and not pay any invoice or part thereof where the Manager reasonably determines that the amount invoiced to date exceeds the amount which should be paid, based upon his determination of the work which has been completed.

G. Expenses Related to Appeals.

(1) The Consultant understands and agrees that, in accordance with Rule 45 Parts 7 and 10, and the terms of each Concessionaire's Concession Agreement, all costs of appeals are to be borne by the appealing Concessionaires. Accordingly Consultant will not invoice the City for any costs related to such appeals, and will not seek any compensation from the City for conducting appeals, but will seek its compensation solely from the appealing Concessionaires. As such, the method for collection of appeals-related costs are

at the discretion of the Consultant, if such methods are consistent with the provisions of Rule 45.

(2) Upon receiving notice of an appeal, Consultant shall appoint a person to serve as Appeal Officer. The Appeal Officer shall be paid for professional services rendered at the rate of One Hundred and Twenty Five Dollars (\$125.00) per hour. No premium shall be paid for performing more than 40 hours of work per week or for working weekends or holidays. The Appeal Officer shall bill only for time spent performing tasks directly related to an appeal. Time spent preparing and submitting billing statements, and time spent travelling shall not be billed.

4. Section 5, "**MAXIMUM CONTRACT LIABILITY**," of the Original Agreement is hereby amended by deleting said section entirely and substituting therefor the following:

**5. MAXIMUM CONTRACT LIABILITY:**

Any other provision of the Agreement, notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of Two Million Six Hundred Forty Thousand and No/100 Dollars (\$2,640,000.00) (the "Maximum Contract Amount") unless this Agreement is amended to materially increase the duties to be performed hereunder or to increase such amount.

5. Section 9, "**INSURANCE**," of the Original Agreement is hereby amended by adding the following to Paragraph F:

Professional liability insurance is required under this agreement. Consultant shall be compensated for the cost of this coverage as a direct reimbursable expense for which no markup shall be allowed. Reimbursement shall be based upon the insurance broker or agent invoice for such coverage submitted by Consultant and the deductible for such coverage shall not be less than \$25,000. Coverage and cost must be preapproved by the DIA Risk Manager before binding the coverage. Consultant agrees to pass on to the City all savings or discounts on standard professional liability insurance premiums Consultant or any sub consultant shall receive as a result of the use of such coverage on the project.

6. Except as otherwise provided herein, all of the terms, provisions, and conditions of the Original Agreement shall remain in full force and effect as if fully set forth herein and are hereby ratified and reaffirmed.

7. This First Amendment is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council, if so required by the City's Charter, and fully executed by all signatories of the City and County of Denver. This First Amendment may be executed in two or more counterparts. Each counterpart will be deemed an original signature page to this Agreement. This First Amendment may be signed electronically by the Parties in the manner specified by the City.

**[SIGNATURE PAGES AND EXHIBITS FOLLOW]**

**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 \_\_\_\_\_



**Contract Control Number:** PLANE-201205015-01

**Contractor Name:** METRIX ADVISORS LLC

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

Name: ROBERT C. McDONIA  
(please print)

Title: PRESIDENT  
(please print)

**ATTEST: [if required]**

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

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

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



## **Exhibit A-1**

### **Additional Scope of Work**

#### **Contract PLANE-201205015**

Note1: Rule 45 was revised December 12, 2012. With that revision, the numbering scheme was changed. Future revisions may change the numbering scheme further. Therefore, when Exhibit A refers to a particular section or subsection of Rule 45, the reader may have to construe the reference to mean the section or subsection of Rule 45 as revised.

Note2. Rule 46 will expand the PVC program to service providers when the rule goes into effect.

**Exhibit A is hereby amended and supplemented by adding the following:**

#### **4.3.2 Customer Service Training**

- a. When requested by DIA, The TPA shall develop, provide, and administer a Customer Service Training program, offering training sessions at regular intervals throughout a calendar year in order to potentially train 80% of airport concession employees and managers. For each calendar year, training content, delivery, program management, supporting activities, and budget must be approved by DIA by October 31 of the prior year. With DIA approval, the TPA may contract with a qualified subcontractor to perform functions of the Customer Service Training program.
- b. For 2014, the parties have a goal of offering training classes in July or August to potentially accommodate all interested concession employees and managers.

#### **8.2 Jeppesen Terminal Secret Shopping**

- a. DIA will provide a list of terminal concessions, contacts for each, and major and minor merchandise category assignments for each, including written communication of new concessions, temporarily closed concessions, and permanently closed concessions at least one month prior to the effective date of the concession opening or closing.
- b. DIA will provide direction on any shopping-specific rules or guidelines for each concession and the TPA will include new Terminal concession locations in its monthly secret shopping program utilizing existing secret shopping forms and minor merchandise categories. To introduce the PVC secret shopping program to new Terminal concessions, the TPA will conduct one (1) initial terminal concessions commencement meeting with each new Terminal concession no later than within 60 days of the date DIA notifies TPA of the additional Terminal concession location(s).

### **8.3 Retail Merchandising Unit (“RMU”) Secret Shopping.**

- a. DIA presently plans to add RMU concession locations to the monthly secret shopping program. DIA will provide a list of RMU concessions, contacts for each, and major and minor merchandise category assignments for each, including written communication of new concessions, temporarily closed concessions, and permanently closed concessions at least one month prior to the effective date of the concession opening or closing.
- b. DIA will provide direction on any shopping-specific rules or guidelines for each concession and the TPA will include the RMU concession locations in its monthly secret shopping program utilizing a new shopping survey form approved by DIA. To introduce the PVC secret shopping program to RMU concessions, the TPA will conduct one (1) initial RMU concessions commencement meeting with each RMU concession no later than within 60 days of the date DIA provides the list of RMU concessions referred to above.