

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. _____

3 SERIES OF 2010

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE, &
5 SUSTAINABILITY

6 A BILL

7 For an ordinance approving a proposed Agreement between the City and County of
8 Denver and KFORCE, INC. related to on-call professional IT consulting services at
9 Denver International Airport.

10
11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **Section 1.** The proposed Agreement between the City and County of Denver and KFORCE,
13 INC., in the words and figures contained and set forth in that form of Agreement filed in the office of
14 the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, on the 30th day of
15 September, 2010, City Clerk's Filing No. 10-997 is hereby approved.

16
17 COMMITTEE APPROVAL DATE: September 24, 2010.

18 MAYOR-COUNCIL DATE: September 28, 2010.

19 PASSED BY THE COUNCIL _____ 2010

20 _____ - PRESIDENT

21 APPROVED: _____ - MAYOR _____ 2010

22 ATTEST: _____ - CLERK AND RECORDER,
23 EX-OFFICIO CLERK OF THE
24 CITY AND COUNTY OF DENVER
25

26 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010; _____ 2010

27
28 PREPARED BY: Kevin Cain;  DATE: September 30, 2010

29 Pursuant to Section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
30 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
31 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6
32 of the Charter.

33
34 David R. Fine, City Attorney

35 BY: _____, _____ City Attorney

36 DATE: September 30, 2010

A G R E E M E N T

THIS AGREEMENT, Contract Number CE 06005, is made and entered into this _____ day of _____, 2010, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City") and KFORCE INC., a Florida corporation, authorized to do business in the state of Colorado (the "Consultant"). Each party may individually be referred to as a "Party" or collectively as the "Parties."

WHEREAS, the City owns, operates and maintains Denver International Airport, (hereinafter referred to as "DIA," or the "Airport"); and

WHEREAS, the City desires to contract for on-call professional IT consultants to perform services at DIA; and

WHEREAS, the Consultant is qualified and ready, willing and able to perform the services as set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **LINE OF AUTHORITY:** The City's Manager of Aviation, his designee or successor in function (the "Manager of Aviation" or the "Manager") authorizes all work performed under this Agreement. The Manager hereby delegates his authority over the work described herein to the Airport's Deputy Manager of Business and Technology (the "Deputy Manager") as the Manager's authorized representative for the purpose of administering, coordinating and approving work performed by the Consultant under this Agreement. The Deputy Manager's authorized representative for day-to-day administration of the Consultant's services under this Agreement is the Project Manager. The Consultant shall submit its reports, memoranda, correspondence and submittals to the Project Manager. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of authority and the Deputy Manager may from time to time designate a different individual to act as Project Manager, upon notice to the Consultant.

2. **SCOPE OF SERVICES; ORDER:** The Consultant, under the general direction of, and in coordination with the Manager, or other designated supervisory personnel as set forth herein, shall diligently perform any and all authorized services provided under this Agreement. The Scope of Work for this Agreement is attached hereto as Exhibit A, "Scope of Work". The job categories, descriptions and rates for the professional IT consultants that Consultant shall provide are described on attached Exhibit B, "Rates and Charges". The City shall authorize specific engagements with the Consultant by placing a written order which will contain a description of the work to be performed and the rate to be charged (the "Order"). The Consultant agrees that during the term of this Agreement it shall fully coordinate its work under all Orders with any person or firm under contract with the City doing work or providing services which affect the Consultant's services. The Consultant shall faithfully perform the work described in any and all Orders in accordance with the standards of care, skill, training, diligence and

10-997

judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in an Order.

3. **TERM:** The term of this Agreement shall commence on September 1, 2010, and shall terminate on August 31, 2013, unless earlier terminated in accordance with the Agreement. The term of this Agreement may be extended for two periods of one (1) year each, by written amendment to this Agreement. Notwithstanding any other extension of term under this paragraph 3, the term of this Agreement may be extended by the mutual agreement of the parties, confirmed by written notice from the City to the Consultant, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate. However, no extension of the Term shall increase the Maximum Contract Liability stated herein; such amount may be changed only by a duly executed written amendment to this Agreement.

4. **COMPENSATION AND PAYMENT:**

A. **Fee:** The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for services rendered and costs incurred under this Agreement and any Order, the rates set forth on **Exhibit B** and as may be further described in an Order.

B. **Reimbursement Expenses:** There are no reimbursable expenses allowed under this Agreement, unless clearly outlined, with specificity, in an Order.

C. **Invoicing:** Consultant shall provide the City with a monthly invoice based on a calendar month in a format and with a level of detail acceptable to the City. The City shall pay any undisputed amounts in accordance with its obligations under the City's Prompt Payment Ordinance.

D. **Maximum Contract Liability:**

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of Five Million Dollars (\$5,000,000.00) (the "Maximum Contract Liability"). Funding under the provisions of this paragraph 4.D. may be payable from the City's Airport System Capital Replacement Fund and/or Airport Operations and Maintenance Fund. The Consultant acknowledges that the City is not obligated to execute an Order, agreement or an amendment to this Agreement for any services and that any services performed by Consultant beyond that specifically described in an Order are performed at Consultant's risk and without authorization under this Agreement.

(ii) The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated as stated herein and encumbered for the purpose of this Agreement. The Parties agree that (a) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and

(b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF CONSULTANT:** The parties agree that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City. It is not intended, nor shall it be construed, that the Consultant or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

6. **TERMINATION:**

A. The City has the right to terminate this Agreement or any Order, in whole or in part, with or without cause, on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the City or the City informs the Consultant that it no longer requires its services, and the Consultant shall bear all the risk of providing same.

B. City may immediately terminate this Agreement in the event the Consultant or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business.

C. Either Party may terminate this Agreement by written notice to the other in the event that the other Party breaches this Agreement and fails to cure such breach to the non-breaching Party's satisfaction within thirty (30) days of written notice specifying the breach.

D. If this Agreement is terminated by the Consultant or by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work that is needed to accomplish an orderly termination of the work and is approved in writing by the Manager. If this Agreement is terminated without cause by the City the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination. In the event that all or any part of this Agreement is terminated for any reason, Consultant will immediately document in detail the status of any services in progress. Consultant will provide all assistance reasonably requested by the City in connection with the efficient and orderly transition of performance of the services by Consultant to the City or any third party designated by the City.

E. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City that the Consultant is using by whatever method the City deems expedient. The Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City; and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE". The City shall use any and all such incomplete documents or incomplete data at its own risk.

F. The Manager, upon giving a minimum of thirty (30) days written notice may terminate this contract, in whole or in part, for the convenience of the City. If this Contract is so terminated, the City shall be liable only for payment in accordance with the payment provisions of this Contract for services rendered prior to the effective date of termination.

G. Upon termination of this Agreement by the City, the Consultant shall not have any claim against the City by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

7. **INTELLECTUAL PROPERTY RIGHTS:** The City and Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Consultant and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media (collectively, "Materials"), shall belong to the City. The Consultant shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Consultant hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

8. **CITY INFORMATION:**

A. The Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Consultant may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Consultant agrees that all Proprietary Data or confidential information provided or otherwise disclosed by the City to the Consultant shall be held in confidence and used only in the performance of its obligations under this Agreement. The Consultant shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall

mean any materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

B. Except as expressly provided by the terms of this Agreement, the Consultant agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Consultant further acknowledges that by providing this Proprietary Data of confidential information, the City is not granting to the Consultant any right or license to use such data except as provided in this Agreement. The Consultant further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager.

C. The Consultant acknowledges and understands that the Proprietary Data may not be completely free of errors. The Proprietary Data should be used for reference only and should not be relied upon in any other way, and the Consultant is hereby advised to independently verify all work performed in reliance upon the Proprietary Data.

D. The Consultant agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Consultant or provided by the City in connection with this Agreement, any Proprietary Data, or any confidential information shall be deemed to be the sole property of the City and all rights, including copyright, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Consultant agrees, with respect to the Proprietary Data and confidential information, that: (1) the Consultant shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) the Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (3) the Consultant shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

E. The Consultant will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Consultant under this Agreement shall survive the expiration or earlier termination of this Agreement. The Consultant shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

F. Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. The Consultant is hereby advised to verify its work. The City assumes

no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Consultant agrees to contact the City immediately.

9. CONSULTANT'S INFORMATION: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, 7B C.R.S. (2003), and that in the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

10. EXAMINATION OF RECORDS: The Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall have access to and the right to examine any books, documents, papers and records of the Consultant, involving transactions related to this Agreement. This right shall survive for a minimum of three (3) years after final payment is made under this Agreement.

11. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by a Party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other Party. A Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

12. PERSONNEL:

A. All key personnel identified in an Order will be dedicated by Consultant to the City. The Consultant shall submit to the Manager a list of any additional personnel who will perform services under an Order within thirty (30) days after an Order has been submitted, together with complete resumes and other information describing their ability to perform the services. Such additional personnel must be approved in writing by the Manager.

B. The Parties intend that all key personnel be engaged to perform their specialty for all services required by an Order and that the Consultant shall retain all key

personnel for the term of the Order. If the Consultant must replace any of its key personnel, it shall notify the Manager in writing of the changes. No such replacement shall be made until the replacement is approved by the Manager, which approval shall not be unreasonably withheld. The Manager shall respond to the Consultant's written notice of replacement within fifteen (15) days of receipt. If the Manager does not respond within that time, the listed replacement personnel shall be deemed approved. If during the term of the Agreement, the Manager determines that the performance of approved key personnel is not acceptable, he shall in his sole and absolute discretion either (a) give the Consultant a reasonable period of time to correct the performance or (b) require the Consultant to replace the personnel as soon as practicable.

C. While the Consultant may retain and contract with subcontractors, no final agreement with any subcontractor shall be entered into without the written consent of the Manager. Requests for approval of subcontractors must be made in writing and include a description of the nature and extent of services to be provided by the subcontractor; the name, address and experience and qualifications of the subcontractor; and any other information which may be requested by the Manager. Because the Consultant's represented qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed subcontractor deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of subcontractors. The Manager shall respond to the Consultant's written notice regarding a subcontractor within thirty (30) days of receipt. If the Manager does not respond within that time, the subcontractor shall be deemed approved. Approval of the subcontractor shall not relieve the Consultant of any obligations under this Agreement. Any final agreement with the approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make a claim of payment against any City property arising out of the performance of this Agreement.

D. The Consultant is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C. § 20-77.

13. INSURANCE:

A. The Contractor shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit C**, which is incorporated into this Agreement by this reference. The Contractor shall submit to the City fully completed and executed certificates of insurance (ACORD form or equivalent approved by the City) which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf, and must be submitted to the City at the time the Contractor signs this Agreement.

B. All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and

remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit C**. All sub-contractors' certificates and endorsements must be received and approved by the Contractor before work commences. The City reserves the right to request copies of these certificates at any time.

C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Risk Management, Airport Office Building, Room 8810, 8500 Pena Boulevard, Denver, Colorado 80249. The City project/Agreement 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 Agreement at any time.

D. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

E. The Contractor shall comply with all conditions and requirements set forth in the insurance certificate for each required form of coverage during all periods in which coverage is in effect.

F. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

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

14. DEFENSE AND INDEMNIFICATION:

A. To the fullest extent permitted by law, the Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are due to the negligence or fault of the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City. Contractor's duty to indemnify or hold harmless the City, its officers, agents, and employees under this

paragraph shall not apply to liability or damages proximately caused by and apportioned to the negligence of the City's officers, agents and employees.

B. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Contractor is not named as a Defendant.

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

F. EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE, IN NO EVENT SHALL CONTRACTOR, ITS EMPLOYEES, CONSULTANTS OR CONTRACTORS BE LIABLE FOR ANY LOSS OF REVENUE OR PROFITS OR ANY INDIRECT SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THEY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

15. TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Consultant shall promptly pay when due, all taxes, excluding any applicable sales state tax, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against City property, including but not limited to land, facilities, improvements or equipment.

16. ASSIGNMENT AND SUBCONTRACTING:

A. The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Manager. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock, equity or control is transferred. Any attempt by the Consultant to assign or transfer its rights or obligations without the prior written consent of the Manager shall, at the option of the Manager, be null and void and terminate this

Agreement and all rights of the Consultant. Consent to the assignment may be granted or denied at the sole and absolute discretion of the Manager. If the City consents to an assignment, then any assignment will not become effective until the assignee unequivocally in a signed document satisfactory to the Manager (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement. Any consent of the City pursuant to this provision must be executed with the same formality as this Agreement. The rights and obligations of the Parties under this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns permitted under this Agreement.

B. The Consultant agrees that it will not subcontract any of its obligations under this Agreement without first obtaining the written consent of the Manager, which consent may be withheld in the absolute discretion of the City. If the City consents to the subcontract, such action shall not be construed to create any contractual relationship between the City and the Consultant's subcontractor. The Consultant shall remain fully responsible to the City for any subcontracted work.

17. DSBO GOALS: The Consultant is subject to the City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. The goal for this Agreement is ten percent (10%). Project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Consultant must comply with the terms and conditions of the MBE/WBE Ordinance in soliciting and contracting with its subcontractors in administering the performance of the work hereunder. It shall be an ongoing, affirmative obligation of the Consultant to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded (10%), for the duration of this Agreement, unless the City initiates a material alteration to the scope of work.

18. NO THIRD PARTY BENEFICIARY: The Parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action to any third person. The Parties intend that any person other than the City or the Consultant receiving services or benefits pursuant to this Agreement shall be deemed to be an incidental beneficiary only.

18. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters that obligate the City must be by the City, as required by Charter and ordinance.

20. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS: This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification related to the subject matter herein shall have any force or effect, unless embodied in this Agreement in writing. No subsequent

novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. This Agreement and any amendments to it shall be binding upon the Parties and their successors and assigns.

21. SEVERABILITY: The Parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of the Parties can be fulfilled.

22. CONFLICT OF INTEREST:

A. The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement; and the Consultant further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

23. NOTICES: Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, to the Parties at the following addresses:

City : Manager of Aviation
 Denver International Airport
 Airport Office Building – 9th Floor
 8500 Peña Boulevard
 Denver, CO 80249-6340

Consultant: Kforce Inc.

Attn: Contracts Management
1001 East Palm Avenue
Tampa, Florida 33605

The addresses may be changed by the Parties by written notice.

24. DISPUTES: All disputes between the City and Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 5-17.

25. GOVERNING LAW; VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

26. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of services under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

27. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Consultant is liable for any violations as provided in the Certification Statute.

B. By signing this Agreement, the Consultant certifies that, at the time of signing, it does not knowingly employ or contract with an illegal alien and that it has participated or attempted to participate in the basic pilot program ("Basic Pilot Employment Verification Program", "Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States.

C. The Consultant shall also comply with the following provisions:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Consultant that the sub-consultant or subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed or attempted to confirm the employment of all employees who are newly hired for employment in the United States through participation in the BPP, and that if it is not accepted into the BPP prior to entering into the Agreement, it shall apply to participate in the BPP every three months until it is accepted into the BPP or the Agreement has been terminated, whichever occurs first.

(4) It is prohibited from using BPP procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days. The Contractor will also then terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

28. AUTHORITY TO ENTER INTO AGREEMENT: Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Consultant represents and warrants that he has been fully authorized by Consultant to execute this Agreement on behalf of Consultant and to validly and legally bind Consultant to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into this Agreement.

29. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the Parties acknowledge that they and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions were prepared by a particular Party.

30. AGREEMENT; ORDER OF PRECEDENCE: This Agreement consists of paragraphs 1 through 38 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work
Exhibit B	Rates and Charges
Exhibit C	City and County of Denver Insurance Certificate
Appendix No. 1	Standard Federal Assurances
Appendix No. 3	Nondiscrimination in Airport Employment Opportunities

In the event of an irreconcilable conflict between (i) a provision of paragraphs 1 through 38 and any of the listed attachments or (ii) between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendices No. 1 and 3
- paragraphs 1 through 38 hereof
- Exhibit A
- Exhibit B
- Exhibit C

31. SURVIVAL OF CERTAIN PROVISIONS: The Parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

32. COMPLIANCE WITH ALL LAWS: All of the services performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and State of Colorado and with the charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver, as amended; including but not limited to the City's Prevailing Wage Ordinance, D.R.M.C. §20-76.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver 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 Consultant and Consultant's agents from City facilities or participating in City operations.

34. CITY SMOKING POLICY: Consultant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the

Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Consultant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

35. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Manager shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Manager, City Council or the Auditor.

36. TIME IS OF THE ESSENCE: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement and any Order, time is of the essence.

37. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

38. CITY EXECUTION OF AGREEMENT: This Agreement shall not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

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ATTEST:

CITY AND COUNTY OF DENVER

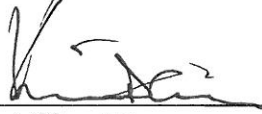
By: _____
STEPHANIE O'MALLEY
Clerk and Recorder,
Ex-Officio Clerk of the City
and County of Denver

By: _____
MAYOR

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

DAVID R. FINE,
Attorney for the
City and County of Denver

By: _____

Assistant City Attorney

By: _____

MANAGER OF AVIATION

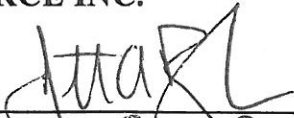
REGISTERED AND COUNTERSIGNED:

By: _____
MANAGER OF FINANCE
Contract Control No. CE 06605

By: _____
AUDITOR

“CITY”

KFORCE INC.

By: _____

Print Name: SCOTT A. RAVGHMAN
Title: VICE PRESIDENT

“CONSULTANT”

APPENDIX NO. 1
STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX NO. 3

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

