

A G R E E M E N T

THIS AGREEMENT is made and entered into as of the date set forth on the City's signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the "City"), and **KPMG CORPORATE FINANCE LLC**, a limited liability company organized under the laws of the State of Delaware and authorized to conduct business in the State of Colorado (the "Consultant").
W I T N E S S E T H:

WHEREAS, the City owns, operates, and maintains Denver International Airport ("DEN" or the "Airport"); and

WHEREAS, the City is under taking the revitalization of the Jeppesen Terminal at the Airport (the "Great Hall Project"); and

WHEREAS, the City desires to obtain professional financial services to assist its Department of Aviation in connection with the Great Hall Project; and

WHEREAS, the City solicited and received proposals for such services and the Consultant's proposal was selected; and

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

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

1. LINE OF AUTHORITY:

The Airport's Chief Executive Officer, her designee or successor in function (hereinafter referred to as the "CEO") authorizes all work performed under this Agreement. The CEO hereby delegates her authority over the work described in this Agreement to the Airport's Chief Revenue Officer EVP Revenue Management ("EVP") as the CEO's authorized representative. The EVP authorizes the Director of Program Development ("Project Manager"), for the purpose of administering, coordinating, and approving work under this Agreement. The Consultant shall submit its reports, memoranda, correspondence, and submittals to the Project Manager. The CEO and the EVP may change this delegation of authority at any time upon notice to the Consultant.

2. PROFESSIONAL SERVICES:

A. General: The Consultant will provide financial and consulting services for the financial and economic management of the Great Hall Project, as described in the attached **Exhibit A** ("Scope of Work") when and as instructed in writing from the EVP by a "Task Order," in accordance with schedules and budgets to be mutually agreed upon.

B. Professional Responsibility: The Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, training, diligence, and judgment provided by competent professionals who perform work of a similar nature to the work described in this Agreement. Consultant hereby represents and

warrants to the City that it will perform its services in a professional and workmanlike manner.

3. COMPENSATION AND PAYMENT; MAXIMUM CONTRACT AMOUNT:

A. Fees: The City will authorize the Consultant to complete specific services described in **Exhibit A** by means of written Task Orders. The City agrees to pay and Consultant agrees to accept as full and complete compensation therefore, a sum negotiated and agreed by the parties prior to the commencement of the services. Before providing services under the a Task Order, Consultant will submit to the Project Manager a complete description of the proposed services, an estimated maximum cost of the services and a schedule of billing rates for the services consistent with the rates set forth in **Exhibit B**. Upon acceptance and approval by the City of the services, the specific services shall memorialized in the form of a written Task Order signed by the Consultant and the EVP.

B. Maximum Contract Amount: Notwithstanding any agreement to pay fees as set forth in **Exhibit B**, the City's maximum payment obligation will not exceed Two Million Dollars (\$2,000,000) the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services performed by Consultant beyond those specifically described in or requested in accordance with **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Consultant's risk and without authorization under the Agreement.

C. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

D. Payment Schedule / Invoicing: Subject to the Maximum Contract Amount set forth at section 3.A. of this Agreement, Consultant's fee shall be paid in the following manner:

i. **Hourly Billing Rates:** The Consultant shall be paid a fee for its services as set forth in **Exhibit B**.

ii. **Expenses:** To the extent not addressed on **Exhibit B** and subject to receipt by the City of acceptable monthly invoices and supporting documentation from the Consultant, expenses incurred in connection with its work under this Agreement shall be reimbursed at cost. All reimbursable travel shall have the prior written approval of the Project Manager, and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Sleeping accommodation costs are limited to a reasonable amount, taking into account costs of alternate facilities in the

location and other relevant factors. Reimbursement for meals and incidentals is limited to the per diem allowed by the City's fiscal accountability rules. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for personal convenience.

iii. Invoices: Payments for each Task Order shall be based upon monthly progress invoices and receipts submitted by Consultant that have been audited and approved by the City in accordance with **Exhibit B**, and this Section 3.D., as follows:

(1) A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Consultant and shall be available for examination by the City, at City request.

(2) The amounts shown on the invoices shall comply with and clearly reference the Scope of Work, the hourly rate, a multiplier where applicable, and allowable reimbursable expenses, if any.

(3) Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.

(4) The signature of an officer of Consultant, along with such officer's certification that it has examined the invoice and has found it to be correct, shall be included on all invoices.

The City reserves the right to reject and not pay any invoice or part thereof where the EVP determines that the amount invoiced exceeds the amount that should be paid based upon the work that has been performed. The City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under the provisions of this contract shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. §5-17.

(iv). Carry Over and Carry Back. If the Consultant's total fees for any portion of the work described above shall be less than the amount budgeted in a Task Order for such work, then the amount by which the budget exceeds the fee may be used, with the written approval of the EVP, to pay fees for additional and related services rendered by the Consultant, if in the EVP's judgment such additional fees are reasonable and appropriate.

(v). Additional Services: The Consultant may also perform services, hereinafter referred to as "Additional Services," which relate to the subject matter of this Agreement, but which the EVP 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 only if the services and the amount of fees and reimbursable expenses for the services have been authorized in writing in advance, in accordance with the billing rates set out in **Exhibit B** and memorialized in a Task Order signed by the Consultant and the EVP. The total amount of fees and reimbursable expense costs for Additional Services shall not in any event cause this Agreement to exceed the Maximum Contract Liability set forth herein, and in no event shall the

approval of Additional Services and the cost of performing them be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability.

E. Prompt Payment Ordinance: The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with Denver's Prompt Payment Ordinance, Section 20-107 *et seq.* of the Denver Revised Municipal Code. The City shall not be liable for the payment of taxes, late charges, or penalties except as expressly provided in the Prompt Payment Ordinance.

F. Source of Funds: All payments under this Agreement shall be paid from either the City and County of Denver Airport Revenue Fund or from the closing between the City and the Project Partner. The City is under no obligation to make payments to or to make any future appropriations or allocations to the Airport Revenue Fund. Further, under no circumstances will payments under this Agreement impact the City and County of Denver General Fund.

4. TERM:

The term of this Agreement shall commence on June 22, 2015 and shall terminate June 21, 2018, unless terminated earlier in accordance with this Agreement.

5. DEFENSE AND INDEMNIFICATION:

A. Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents, and employees against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Consultant or its subcontractors.

B. Consultant'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 Consultant has not been named as a Defendant.

C. Consultant 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 Consultant under the terms of this indemnification obligation. The Consultant 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.

6. **INSURANCE:**

A. The Consultant 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** (Certificate of Insurance), which is incorporated into this Agreement by this reference. The Consultant 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 Consultant 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 subcontractors' certificates and endorsements must be received and approved by the Consultant 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 Peña Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance.

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 Consultant 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 Consultant under the terms of this Agreement, including the Indemnification provisions herein. The Consultant 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.

7. **COLORADO GOVERNMENTAL IMMUNITY ACT:**

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, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City and County of Denver, its officers, officials and employees.

8. 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 which obligate the City must be by the City as required by Charter and ordinance.

9. SUBCONSULTANTS AND SUBCONTRACTORS:

A. Although the Consultant may retain, hire, and contract with outside subconsultants, the use of any subconsultants not expressly identified in Consultant's proposal shall require the prior written consent of the CEO or her authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subconsultant, and any other information requested by the CEO. Any final agreement or contract with an approved subconsultant must contain a valid and binding provision whereby the subconsultant waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

B. Because the Consultant's represented professional qualifications are a consideration to the City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subconsultant or subcontractor deemed by her, in her sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO shall have the right to limit the number of outside subconsultants or subcontractors or to limit the percentage of work to be performed by them.

10. ASSIGNMENT:

The Consultant covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the CEO. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent of the CEO shall, at the option of the CEO, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of said CEO.

11. INSPECTION OF RECORDS:

A. In connection with any consulting services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the Consultant which are directly pertinent to a specific grant program for the

purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

B. The Consultant agrees that until the expiration of three years after the final payment under this Agreement, any duly authorized representative of the City, including the CEO or City Auditor or their representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Consultant involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

12. INFORMATION FURNISHED BY CITY:

The City will furnish to the Consultant available information concerning the Airport and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract. The Consultant shall be responsible for the verification of the information provided to the Consultant. Consultant agrees to execute and abide by a nondisclosure agreement substantially in the form of the attached **Exhibit D**.

13. COLORADO OPEN RECORDS ACT:

The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.*, and the Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which the Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

14. STATUS OF CONSULTANT AS INDEPENDENT CONTRACTOR:

A. It is understood and agreed by and between the parties hereto 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 9.1.1.(E)(x) of the Charter of the City, and it is not intended nor shall it be construed that the Consultant, its employees or subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

B. The Consultant shall have no authority to act on behalf of the City or to perform management decisions of the City, other than as expressly provided in this Agreement. The Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that

purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

15. TERMINATION:

A. The City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant and with 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 CEO.

B. If this Agreement is terminated by the Consultant, or if this Agreement is terminated 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 which the CEO approves in writing which she determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.

C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and 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. This paragraph specifically excludes any software licenses, and the rights granted to the City thereunder, shall, upon termination, cease and the software programs shall be uninstalled and returned to Consultant or destroyed.

D. Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

E. The Consultant has the right to terminate this contract with or without cause by giving not less than thirty (30) days prior written notice to the City.

16. NOTICES:

Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement and other notices of similar importance shall be made:

by Consultant to: Chief Executive Officer of the Department of
Aviation
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by City to:

KPMG Corporate Finance LLC
111 Congress Avenue
Suite 2500
Austin, TX 78701
Attention: Guy Wilkinson
Managing Director Infrastructure
Advisory

17. NO WAIVER OF RIGHT:

No assent, expressed or implied, to any breach of any one or more of the covenants, terms and provisions of this Agreement shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

18. ADMINISTRATIVE HEARING:

Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in the Denver Revised Municipal Code §5-17. The parties hereto agree that the CEO's determination resulting from said administrative hearing shall be final, subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

19. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment 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; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

20. CONFLICT OF INTEREST:

The Consultant agrees that it will not knowingly engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all known 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 interest 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 for convenience 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 acceptable to the City.

21. CONSULTANT'S PROFESSIONAL RELATIONSHIPS WITH THE VENDORS

The City is aware that the Consultant may provide assurance, tax, and/or advisory services to potential vendors. At the point that the City identifies vendors for consideration, Consultant will perform an internal search for professional relationships with the vendors selected for RFP distribution by City. The Consultant will advise City of the general nature of services provided to the vendor, as permitted. However, the City acknowledges that KPMG is a large firm that is engaged by new clients on a daily basis and as a result, the Consultant cannot guarantee that following the initial relationship search, an engagement for a vendor under consideration will not be accepted somewhere else in our firm. Should any new information come to the Consultant's attention, the Consultant will promptly inform the City.

22. TAXES AND COSTS:

The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City. If the City is exempt from the payment of such sales or use taxes, the City shall promptly, upon the execution of this Agreement, notify and provide to Consultant a tax-exempt certificate.

23. COMPLIANCE WITH ALL LAWS AND REGULATIONS:

All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver.

24. NO THIRD PARTY BENEFICIARIES:

The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that subconsultants and any other person other than the City or the Consultant receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

25. ADVERTISING AND PUBLIC DISCLOSURES:

The Consultant shall not reference this Agreement or its work hereunder in marketing or public relations materials without first obtaining the written approval of the CEO, which approval will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings, and technical data which have been submitted to the Project Manager for review and approval. The Project Manager shall review and either reject, modify, or

approve submittals in a timely manner so that the Scope of Work is not adversely affected. Nothing herein shall preclude the transmittal by the City of any information to officials of the City, including without limitation, the Mayor, the CEO, member, or members of City Council, or the Auditor.

26. OWNERSHIP OF WORK PRODUCT:

The City may, without restriction, make use of materials and documents created by Consultant and/or submitted to the City by the Consultant under this Agreement. The product of any custom development work performed by the Consultant specifically for the City shall become the sole property of the City.

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

A. The Agreement is subject to C.R.S. §8-17.5-102 and the Denver Revised

Municipal Code §20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.

B. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in C.R.S. § 8-17.5101(3.7), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Consultant also agrees and represents that:

(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 subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant 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 C.R.S. §8-17.5-102(5), or the City Auditor under authority of Denver Revised Municipal Code §20-90.3.

28. FEDERAL PROVISIONS:

This Agreement 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 the extension, expansion or development of the Airport.

29. BOND ORDINANCES; GOVERNING LAW; VENUE:

This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to the Airport's General Bond Ordinance any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado.

30. 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.

31. 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 25 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.

32. ENTIRE AGREEMENT:

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those which are expressly reserved herein to the CEO, shall be valid unless they are contained in an instrument which is agreed to by all the parties with the same formality as this Agreement.

33. SEVERABILITY:

In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

34. HEADINGS:

The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

35. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

This Agreement consists of Articles 1 through 46, which precede the signature page, and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

- Exhibit A: Scope of Work
- Exhibit B: Schedule of Rates and Fees
- Exhibit C: Certificate of Insurance

In the event of an irreconcilable conflict (i) between a provision of Articles 1 through 46 and any of the listed exhibits or attachments or (ii) between provisions of any exhibits or 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:

- Articles 1 through 46 hereof
- Exhibit A
- Exhibit B
- Exhibit C

36. CITY EXECUTION OF AGREEMENT:

This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver. This Agreement may be signed electronically by either party in the manner specified by the City.

37. LIMITATION OF LIABILITY.

Notwithstanding anything else in this contract (including its attachments) to the contrary, the liability of the Consultant on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to Consultant under the Contract. In no event shall Consultant be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

38. MUNICIPAL ADVISOR DISCLOSURE.

It is understood and agreed that Consultant is not registered with the SEC as a municipal advisor and that the City is not asking Consultant to provide, and Consultant will not provide, any services to the City which would require registration as a municipal advisor, including but not limited to advice with respect to municipal financial products or the issuance of municipal securities. Accordingly, Consultant will not make recommendations relating to municipal financial products or the issuance of municipal securities, and Consultant will not owe a fiduciary duty to the City under Section 15B of the Securities Exchange Act of 1934. The City represents to Consultant that if the City desires municipal advisor services in connection with or related to the subject matter of this engagement, it will obtain such services from another party.

39. MANAGEMENT DECISIONS.

The City acknowledges and agrees that Consultant's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the City. The Consultant will not perform management functions or make management decisions for the City.

40. THIRD PARTY USAGE.

Any advice, recommendations, information, deliverables or other work product provided to the City under this Contract is for the sole use of the City, and is not intended to be, and may not be, relied upon by any third party, and all advice, recommendations, information, deliverables, or other work product may be marked to so indicate. Except for disclosures that are required by law or that are expressly permitted by this Contract, the City will not disclose or permit access to such advice, recommendations, information, deliverables, or other work product to any third party without the Consultant's prior written consent.

41. CALIFORNIA ACCOUNTANCY ACT.

For engagements where services will be provided by the Consultant through offices located in California, the City acknowledges that certain of Consultant's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various localities.

42. ELECTRONIC COMMUNICATIONS.

Consultant may communicate with the City by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. The City accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). The City agrees that the final hardcopy version of a document, including a deliverable, or other written communication that Consultant transmits to the City shall supersede any previous versions transmitted electronically by Consultant to the City unless no such hard copy is transmitted.

43. ACTIVE SPREADSHEETS AND ELECTRONIC FILES.

Consultant may use models, electronic files, and spreadsheets with embedded macros created by Consultant to assist Consultant in providing the services under the Contract. If the City requests a working copy of any such model, electronic file or spreadsheet, Consultant may, at its discretion, make such item available to the City for the City's internal use only and such item shall be considered a deliverable (subject to the requirements herein); provided that the City is responsible for obtaining the right to use any third party products necessary to use or operate such item.

44. USE OF VENDORS.

The City acknowledges that in connection with the performance of services under the Contract, Consultant may use the services of KPMG controlled entities and/or KPMG member firms to complete the services required by this contract. The City also acknowledges that in connection with the performance of services under the Contract, Consultant uses vendors within and without the United States to provide at Consultant's direction administrative and clerical services to Consultant. These vendors may in the performance of such services have limited access to information, including but not limited to confidential information, received by Consultant from or at the request or direction of the City. Consultant represents to the City that each such vendor has agreed to conditions of confidentiality with respect to the City's information to the same or similar extent as Consultant has agreed to pursuant this Contract. Consultant will have full responsibility to cause these vendors to comply with such conditions of confidentiality and Consultant shall be responsible for any consequences of their failure to comply. Accordingly, the City consents to Consultant disclosure to a vendor and the use by such vendor of data and information, including but not limited to confidential information, received from or at the request or direction of the City for the purposes set forth herein.

45. VOLUME REBATES.

Where Consultant is reimbursed for expenses, Consultant's policy is to bill clients the amount incurred at the time the good or service is purchased. If Consultant subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, Consultant does not credit such payment to its clients. Instead, Consultant applies such payments to reduce its overhead costs, which costs are taken into account in determining Consultant's standard billing rates and certain transaction charges that may be charged to clients.


46. OWNERSHIP OF MATERIALS.

The Consultant retains all ownership rights in any proprietary methodologies, methods, processes, or procedures of the Consultant that pre-exist or were developed outside the scope of this Contract. If any such property of Consultant is contained in any of the deliverables hereunder, the Consultant grants to the City a royalty-free, paid-up, non-exclusive, perpetual license to use such Consultant intellectual property in connection with the City's use of the deliverables.

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

Contract Control Number: PLANE-201520619-00

Contractor Name: KPMG CORPORATE FINANCE LLC

By: 

Name: GUY WILKINSON
(please print)

Title: MANAGING DIRECTOR
(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 A

Scope of Work (SOW)

Task Order 1: RFP Development and Interactive Process

1. The Consultant will assist the City with the following tasks related to the development of RFP documents in preparation for RFP submittal evaluation:

1.1. Evaluate the City's financial plan for the Great Hall Project and analyze alternative deal structure

- 1.1.1. Review and confirm project goals and scope for the Great Hall Project
- 1.1.2. Review existing financial feasibility analysis performed by the City and other consultants
- 1.1.3. Develop high-level financial model for various transaction financial and commercial structures
- 1.1.4. Analyze potential financial and commercial structures
- 1.1.5. Identify and evaluate potential funding sources for the Great Hall Project

1.2. Develop Request for Proposal (RFP) documents

- 1.2.1. Review and comment on the Great Hall Project work plan and procurement strategy
- 1.2.2. Advise on development of commercial and financial elements of the draft P3 Agreement Heads of Terms
- 1.2.3. Assist the City with development of the RFP evaluation criteria and methodology
- 1.2.4. Assist in development of commercial and financial aspects of procurement documentation: RFP, draft P3 Agreement, draft operating agreement, etc.
- 1.2.5. Assist in further development of risk allocation matrix and strategies for the P3 transaction
- 1.2.6. Assist in finalizing RFP documents and schedule

1.3. Preparation and negotiation of P3 Agreements

- 1.3.1. Advise on matters of financial and commercial policy related to the Great Hall Project
- 1.3.2. Assist the City in one-on-one meetings with shortlisted firms
- 1.3.3. Advise the City on negotiation strategy with shortlisted firms
- 1.3.4. Assist in evaluating, communicating, and advising the City of financial and risk implications of major deal terms during negotiations

1.4. Support the City in all phases of RFP Process

- 1.4.1. Participate in the RFP interactive sessions with the Proposers
- 1.4.2. Recommend strategies to the City to maximize competitive tension during RFP development stage

- 1.4.3. Advise on financing concepts presented by shortlisted teams based on experience and current industry leading practices
- 1.4.4. Advise the City on financial and commercial implications of proposed deal structures and deal terms

1.5. Develop tools and / or financial models to assist the City in proposal evaluation and negotiations

- 1.5.1. Develop financial analytical tools to assist in the evaluation of RFP submissions
- 1.5.2. Support the City in the development of financial evaluation approach for RFP submissions
- 1.5.3. Provide financial and commercial input on the legal and technical evaluation of RFP submissions
- 1.5.4. Assist in the evaluation of shortlisted firms' submitted plans of finance and assess the relative risks and advantages of the proposed deal structure relative to other submittals and to the City's overall financial plan and commercial goals for the Great Hall Project

1.6. Assist the City in developing marketing materials and external communications

- 1.6.1. Assist the City in the development of communications tools (presentations, fact sheets, project dashboards) to assist the City staff in communicating Great Hall Project status and progress to stakeholders

1.7. Project Management and Administration

- 1.7.1. Maintain adequate records and comply with required administrative documentation and staffing, project management, and project finance controls
- 1.7.2. Provide monthly progress reporting and invoicing in accordance with City's requirements

Deliverables

□ Output of financial analysis and present potential commercial and financial structures □
Draft of RFP financial requirements section

Task Order 2: RFP Evaluation

2. The Consultant will assist the City with the following tasks in Evaluation of RFP submittals and in preparation for contract negotiations:

2.1. Develop tools and / or financial models to assist the City in proposal evaluation and negotiations

- 2.1.1. Develop financial analytical tools to assist in the evaluation of RFP submissions
- 2.1.2. Support the City in the financial evaluation of RFP submissions
- 2.1.3. Provide financial and commercial input on the legal and technical evaluation of RFP submissions
- 2.1.4. Assist in the evaluation of shortlisted firms' submitted plans of finance and assess the relative risks and advantages of the proposed deal structure relative to other

submittals and to the City's overall financial plan and commercial goals for the Great Hall Project

2.2. Preparation and negotiation of P3 Agreements

- 2.2.1. Advise on matters of financial and commercial policy related to the Great Hall Project
- 2.2.2. Assist the City in one-on-one meetings with shortlisted firms
- 2.2.3. Advise the City on negotiation strategy with shortlisted firms
- 2.2.4. Assist in evaluating, communicating, and advising the City of financial and risk implications of major deal terms during negotiations

2.3. Assist the City in developing marketing materials and external communications

- 2.3.1. Assist the City in the development of communications tools (presentations, fact sheets, project dashboards) to assist the City staff in communicating Great Hall Project status and progress to stakeholders

2.4. Project Management and Administration

- 2.4.1. Maintain adequate records and comply with required administrative documentation and staffing, project management, and project finance controls
- 2.4.2. Provide monthly progress reporting and invoicing in accordance with City's requirements

Deliverables

- Output of financial analysis and present potential commercial and financial structures

Task Order 3: Preferred Developer Negotiations to Commercial Close

- 3. The Consultant will assist the City with the following tasks in support of contract negotiations and pre-development:

3.1. Support the City in final negotiations with the preferred developer through to commercial and financial close

3.2. Develop tools and / or financial models to assist the City in proposal evaluation and negotiations

- 3.2.1. Develop financial analytical tools to assist in the financial evaluation of predevelopment documents
- 3.2.2. Provide financial and commercial input on the legal and technical evaluation predevelopment documents
- 3.2.3. Assist in the evaluation of preferred firms' submitted plans of finance and assess the relative risks and advantages of the proposed deal structure relative to other submittals and to the City's overall financial plan and commercial goals for the Great Hall Project

3.3. Preparation and negotiation of P3 Agreements

- 3.3.1. Advise on matters of financial and commercial policy related to the Great Hall Project

- 3.3.2. Assist the City in one-on-one meetings with preferred firms
- 3.3.3. Advise the City on negotiation strategy with preferred firms
- 3.3.4. Assist in evaluating, communicating, and advising the City of financial and risk implications of major deal terms during negotiations

3.4. Assist the City in developing marketing materials and external communications

- 3.4.1. Assist the City in the development of communications tools (presentations, fact sheets, project dashboards) to assist the City staff in communicating Great Hall Project status and progress to stakeholders

3.5. Project Management and Administration

- 3.5.1. Maintain adequate records and comply with required administrative documentation and staffing, project management, and project finance controls
- 3.5.2. Provide monthly progress reporting and invoicing in accordance with City's requirements
- 3.5.3. Further progress the risk allocation matrix and strategies for the project implementation

Further task orders may be added to this Scope of Work as applicable.

EXHIBIT B

FEES

1. Fee Estimate for Task Order 1

Fees will be charged on a time and materials basis for hours worked, according to the following rate schedule:

Resource	Discounted Hourly Rate (\$)
Partner / Managing Director	\$575
Director	\$475
Manager	\$390
Senior Associate	\$325
Associate	\$275

Hourly rates above are fixed for a period of 3 years from the date of this Agreement. Beyond that date hourly rates increase at a fixed rate of 3 percent per annum.

The table below provides the Consultant's fee estimate to undertake the Scope of Work in Task Order 1 (Exhibit A) for the Great Hall Project by task and resource level.

Task	Description	Partner/MD	Director	Manager	Sr Associate	Estimated Hours by Task	Estimated Fees by Task
		\$575	\$475	\$390	\$325		
1	The Consultant will assist the City with the following tasks related to the development of RFP documents in preparation for RFP submittal evaluation.	536	804	508	282	2,130	\$ 979,870
2	The Consultant will assist the City with the following tasks in Evaluation of RFP submittals and in preparation for contract negotiations	238	262	214	154	868	\$ 394,810
3	The Consultant will assist the City with the following tasks in support of contract negotiations and pre-development	146	224	208	114	692	\$ 308,520
Estimated Hours by Resource:		920	1290	930	550	3,690	
Estimated Fees by Resource:		\$ 529,000	\$ 612,750	\$ 362,700	\$ 178,750		\$ 1,683,200

2. Fees for Additional Task Orders

Additional task orders that may be identified and added to the scope of work under Exhibit A will be charged at the rate schedule shown above (in *Fee Estimate for Task Order 1*).

3. Expenses

Expenses are not included in the fee estimate and shall be invoiced monthly, according to the terms of the Agreement.

4. Fee Assumptions

To provide context for the basis of the aforementioned fee estimate, the key assumptions are as follows:

- Consultant has access to the City financial plan and information to assess debt capacity and current coverage.
- City and other advisors are leading the drafting of the RFP documentation.
- The Consultant is not providing legal services or legal advice.
- The fee estimate assumes according to the City schedule selection of a preferred developer by December 31, 2015 and achievement of commercial close by June 30, 2016.
- The Maximum Contract Amount identified in Section 3 of the Agreement is based on reasonable expectations of work to be performed over a three (3) year contract term, inclusive of the specific tasks included in Task Order 1, 2 and 3 above.
- Task 1 is assumed to run from mid June 2015 to end November, 2015.
- Task 2 is assumed to run from early December, 2015 to end of January 2016.
- Task 3 is assumed to run from February 2016 to June 30, 2016.

EXHIBIT C
CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS - DEPARTMENT OF AVIATION

EXHIBIT C
CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS - DEPARTMENT OF AVIATION

Certificate Holder:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810 Denver
CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201520619 –
Great Hall Financial Advisor**

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.
3. If the Insured is a sole proprietor, they are not required by the State of Colorado to purchase workers compensation coverage.

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit
\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. If no autos are owned, then the Hired and Non-owned auto liability must be purchased.
2. If the Insured does not carry business auto coverage, they must show proof of insurance for limits currently required by the State of Colorado. Professional Liability

Coverage: Professional Liability

Minimum Limits of Liability (In Thousands)	Per Claim
\$1,000	Aggregate \$2,000

Any Policy issued under this section must contain, include or provide for the following:

1. Policies written on a claims-made basis must remain in force for three years ERP in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.
3. Any cancellation notice required herein must be provided by Certified Mail.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on these Insurance Requirements shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or nonrenewed before the expiration date thereof, the insured, or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

EXHIBIT D

NON-DISCLOSURE AGREEMENT

AGREEMENT REGARDING CONFIDENTIALITY AND NON-DISCLOSURE

1. **KPMG CORPORATE FINANCE LLC**, IS a Delaware limited liability company (“KPMG”). As used in this Agreement, the term “KPMG” is understood to include the company and its employees, officers, agents, representatives, KPMG controlled entities and/or KPMG member firms and vendors used by KPMG.
2. The City and County of Denver, through its Department of Aviation (“Aviation”), will be entering into a contract with KPMG for consulting services related to strategic planning and selection of a private partner for the revitalization of the Jeppesen Terminal at the Airport called “The Great Hall Project.”
3. As part of its work on the Great Hall Project, KPMG may be told or provided with or otherwise have access to either documentary or verbal information which may be confidential or proprietary or from which confidential or proprietary information may be learned deductively.
4. KPMG understands the following with respect to any documents or verbal or other information that is provided by Aviation pursuant to work on the Great Hall Project:
 - A. Certain documents and other information may be protected from disclosure under the Colorado Open Records Act, the federal Freedom of Information Act, or other local, state or federal law;
 - B. Some documents and other information may be considered by Aviation to contain information that is confidential or proprietary, and could contain information that is commercially or financially sensitive; and
 - C. Verbal communications between KPMG and Aviation employees or others active in the Great Hall Project will be made with the expectation that such communications will be treated confidentially.
5. KPMG agrees to the following with respect to any documents and other written or verbal information that are provided pursuant to work performed under this contract:
 - A. KPMG will safeguard these documents and other information, and the information contained in any such documents or confidential verbal communications, to prevent inadvertent disclosure of the information;
 - B. KPMG will not release these documents or information to any party, company, person, organization, or entity for any reason other than those directly related to work performed under this contract, except as required by law or legal process;

C. KPMG will not release documents or other written information, or the information contained in such documents, pursuant to a request under the Colorado Open Records Act or the federal Freedom of Information Act without affording Aviation the opportunities under those laws to protect these documents from disclosure.

6. KPMG further understands that the City and County of Denver may seek legal remedies for any violation of these provisions, including seeking an injunction.
7. The restrictions of this Agreement shall not apply to any information which (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by KPMG; (ii) was available to KPMG on a non-confidential basis prior to its disclosure under this Agreement; or (iii) becomes available to KPMG on a nonconfidential basis from a third party which was not itself bound by a confidentiality obligation and was free to disclose the information.
8. The person signing for KPMG personally warrants that he or she has the complete authority to sign on behalf of and bind KPMG.

By signature below, KPMG affirms and agrees to the above.

By: _____

Printed name: _____

Title: _____

Date _____